

1177
No. 3192

United States 1177

Circuit Court of Appeals

For the Ninth Circuit.

THE UNITED PROPERTIES COMPANY OF CALIFORNIA, and the Substituted Defendants Therein, to-wit: ALBERT HANFORD, W. S. TEVIS, C. E. GILMAN, LEO R. DICKEY, S. J. BELL, M. O'CONNELL and HARRY W. DAVIS as Trustees, Acting for and on Behalf of Said THE UNITED PROPERTIES COMPANY OF CALIFORNIA, a Defunct Corporation,

Plaintiffs in Error,

vs.

MARY ELLEN KIBBE,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the Southern Division of the United States District Court of the Northern District of California, Second Division.

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE UNITED PROPERTIES COMPANY OF CALIFORNIA, and the Substituted Defendants Therein, to-wit: ALBERT HANFORD, W. S. TEVIS, C. E. GILMAN, LEO R. DICKEY, S. J. BELL, M. O'CONNELL and HARRY W. DAVIS as Trustees, Acting for and on Behalf of Said THE UNITED PROPERTIES COMPANY OF CALIFORNIA, a Defunct Corporation,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the Superior Court of the State of California in
and for the City and County of San Francisco.*

No. 68,416, Dept. —.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,

Defendant.

Complaint for Damages.

The plaintiff above named complains of the de-
fendant above named and for cause of action alleges:

I.

That United Properties Company of California is
now and during all the times herein mentioned was
a corporation organized and existing under and by
virtue of the laws of the State of Delaware and hav-
ing its principal place of business in the City and
County of San Francisco, State of California.

II.

That on the 15th day of February, 1912, the de-
fendant for a valuable consideration undertook and
agreed in writing to deliver to Ira M. Condit and
Mary Ellen Kibby as joint owners or the survivor
of them or order thirteen of its first mortgage and
collateral trust five per cent fifty year sinking fund
gold bonds of the denomination of \$1,000 each with
all interest coupons attached, said bonds to be issued
under and secured by a deed of trust dated January
1st, 1911, then in course of preparation made by the
said defendant and so to be delivered under, as and

when said bonds might be certified, issued and ready for delivery; a true and correct copy of which agreement, marked exhibit "A" is hereto attached and is hereby referred to and made a part hereof for all purposes in the same manner as if the same were specifically and in this paragraph at length set forth. [1*]

III.

That the said Ira M. Condit died on the 25th day of April, 1915, and that the plaintiff Mary Ellen Kibbe is the sole owner and holder of the said agreement; that the said Mary Ellen Kibbe mentioned in the said agreement is the same person as the plaintiff herein; that the true and correct name of said Mary Ellen Kibby as mentioned in the said agreement is "Mary Ellen Kibbe," and that said Mary Ellen Kibbe was the daughter of said Ira M. Condit.

IV.

That on the 13th day of September, 1915, the said plaintiff demanded that the said defendant execute and deliver to the plaintiff its said thirteen first mortgage and collateral gold bonds as required by the said agreement and execute the said deed of trust mentioned in the said agreement, and that the said defendant has wholly failed, refused and neglected to execute and deliver said bonds or to execute the said deed of trust and the said bonds have never been executed or delivered to plaintiff or at all and the said deed of trust has never been executed.

V.

That at the time said demand was made by said

*Page-number appearing at foot of page of original certified Transcript of Record.

plaintiff the said plaintiff tendered to the said defendant the said agreement, a copy of which is set forth in said exhibit "A" as aforesaid and offered to surrender to said defendant the said agreement upon the execution and delivery by said defendant to said plaintiff of the said thirteen bonds.

VI.

That no part of the said sum of \$13,000 mentioned in the said agreement has been paid to the plaintiff or at all; that had said gold bond been executed and delivered to plaintiff as [2] required by said agreement and had the said deed of trust been executed as required by said last mentioned agreement the said bonds would now be of the value of \$13,000 in gold coin of the United States and that by reason of the premises plaintiff has been and is damaged in the sum of \$13,000.

WHEREFORE, plaintiff prays for judgment against said defendant in the sum of \$13,000, interest at the rate of six per cent per annum and costs of this action.

HERBERT W. ERSKINE,
Attorney for Plaintiff.

State of California,
County of Alameda,—ss.

Mary Ellen Kibbe, being duly sworn deposes and says: that she is the plaintiff in the above-entitled action; that she has read the foregoing complaint and knows the contents thereof, that the same is true of her own knowledge except those matters which are therein stated on information and belief and as

to those matters she believes it to be true.

MARY ELLEN KIBBE.

Subscribed and sworn to before me this 16th day
of September, 1915.

HARRIS JENKS,

Notary Public in and for the County of Alameda,
State of California. [3]

(Filed Sept. 17, 1915. H. I. Mulcrevy, Clerk.
By W. R. Castagneto, Deputy Clerk.)

Exhibit "A" to Bill of Complaint.

"BOND CERTIFICATE.

Number	Par Value of Bonds
660.	\$13,000.00
For First Mortgage and Col- lateral Trust Five Per Cent	Fifty-Year Sinking Fund Gold Bonds.

**THE UNITED PROPERTIES COMPANY
OF CALIFORNIA.**

The United Properties Company of California, a corporation organized and existing under the laws of the State of Delaware, for value received, promises to deliver to Ira M. Condit and Mary Ellen Kibby as Joint Owners, or the Survivor of them, or order, upon the surrender of this Certificate duly endorsed, thirteen of its "First Mortgage and Collateral, Trust Five Per Cent Fifty Year Sinking Fund Gold Bonds," of the denomination of One Thousand Dollars (\$1,000.00) each with all interest coupons thereto attached, said bonds to be issued under and secured by the Deed of Trust in prepara-

tion dated January 1, 1911, made by said The United Properties Company of California, and to be delivered hereunder as and when the said bonds may be certified and ready for delivery.

IN WITNESS WHEREOF, said The United Properties Company of California, has hereunto caused its corporate name to be signed and its corporate seal to be affixed by its President or one of the Vice-Presidents and Treasurer or Assistant Treasurer thereunto duly authorized, this 15th day of February, 1912.

THE UNITED PROPERTIES COMPANY OF CALIFORNIA.

W. K. ALBERGER,
Vice-President.

A. G. RAYERAFT,
Asst. Treasurer. [4]

Endorsed on Certificate:

“Interest from Jan. 1st to July 1st, 1911, amounting to \$325.00 paid July 1st, 1911, \$25.00 Nov. 18, 1911, \$300.00.

A. G. RAYERAFT,
Asst. Treasurer.

“Interest from July 1st, 1911 to Jan. 1st, 1912, amounting to \$325.00, paid Jan. 2nd, 1912.

A. G. RAYERAFT,
Asst. Treasurer.

“Interest from Jan. 1st, 1912 to July 1st, 1912 amounting to \$325.00 paid July 1st, 1912.

A. G. RAYERAFT,
Asst. Treasurer.

“Interest from July 1st, 1912 to Jan. 1st, 1913 amounting to \$325.00 paid January 2nd, 1912.

A. G. RAYERAFT,
Asst. Treasurer.”

“For Value Received — hereby sell, assign and transfer unto _____ the within Bond Certificate for _____ bonds of the within named Company, represented by the said Bond Certificate, and to hereby irrevocably constitute and appoint _____ attorney to transfer the said Bond Certificate, or to exchange the same for the bonds represented thereby, with the full power of substitution in the premises.

Dated —, 19—.

In the presence of

_____. [5]

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 68,416, Dept. No. —.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,

Defendant.

(Notice of Petition for Removal.)

To Plaintiff Above Named, and to Her Attorney,
Herbert W. Erskine, Esq.:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on February 15th, 1916, at four o'clock P. M. of said day, or as soon thereafter as may be, the defendant will file in the above-entitled Court a verified petition for the removal of this suit to the District Court of the United States, for the Northern District of California, together with a bond in the sum to be fixed by the Court, with good and sufficient sureties, for the defendant entering in such District Court within thirty days from date of the filing of said petition, a certified copy of the record of said suit, and for paying all costs that may be awarded by the said District Court, if said District Court should hold that such suit was wrongfully or improperly removed thereto, and also for the defendants appearing and entering special bail in such suit if special bail was originally requisite therein.

Said petition will be made upon the ground that the controversy in said suit is, and at the time of the commencement of this suit, and at the time when the demands mentioned in the complaint were assigned to and acquired by the plaintiff, a controversy wholly between citizens and residents of [6] different states.

Dated: February 15, 1916.

R. P. HENSHALL,
Attorney for Defendant.

Upon application of the defendant, and good cause appearing therefor.

IT IS ORDERED that the foregoing notice may be served at any time earlier than three hours before the filing of said petition and bond in the above-entitled court.

Dated: February 15, 1916.

GEORGE H. CABANISS,
Judge of the Superior Court.

Due service and receipt of the foregoing notice is hereby admitted this 15th day of Feb. 1916 at the hour of 12:38 P. M.

HERBERT W. ERSKINE,
(By A. D. K.)

Attorney for Plaintiff. [7]

(Filed Feb. 15, 1916, H. I. Mulcrevy, Clerk. By
H. Brunner, Deputy Clerk.)

*In the Superior Court of the State of California, in
and for the City and County of San Francisco,
Department No. —.*

No. 68,416.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,

Defendant.

**Petition for Removal to the District Court of the
United States for the Northern District of
California.**

To the Honorable the Superior Court of the State
of California, in and for the city and county
of San Francisco:

Your petitioner, United Properties Company of
California, a corporation, respectfully shows:

That this is a suit of a civil nature at law, wherein
the plaintiff seeks to recover of this petitioner the
sum of \$13,000 damages, exclusive of interest and
costs; that the amount in dispute in the above-en-
titled action exceeds the sum or value of \$3,000, ex-
clusive of interest and costs; that the controversy in
said suit is and at the time of the commencement of
this suit and at the time of the death of Ira M.
Condit, mentioned in the complaint therein, was
wholly between citizens and residents of different
States, which suit can be fully determined between
them; that your petitioner, United Properties Com-
pany of California, a corporation, was at the time
of the death of the said Ira M. Condit, mentioned in
the complaint in said suit, and was at the time of
the commencement of this suit, and still is, a resident
and citizen of the State of Delaware, to wit, a cor-
poration organized and existing under the laws of
the State of Delaware, and that said corporation is
a non-resident of the State of California; that the
plaintiff, Mary Ellen Kibbe, also referred to in the
complaint as [8] Mary Ellen Kibby, was at the
time of the commencement of this suit and still is
a resident and citizen of the city of Oakland, county

of Alameda, State of California, and that said Ira M. Condit, referred to in the complaint in said action, was at the time of his death a resident and citizen of the city of Oakland, county of Alameda, and State of California; that neither said Mary Ellen Kibbe nor said Ira M. Condit was, or is, a resident or citizen of the State of Delaware;

That your petitioner has filed herein and offers herewith a bond, with good and sufficient surety, for its entering in the District Court of the United States, in and for the Northern District of California, within thirty days from the date of the filing of this petition, a certified copy of the record in this suit and for paying all costs that may be awarded by the said District Court, if said District Court shall hold that this suit was wrongfully or improperly removed thereto, and also for its appearing and entering special bail in said suit, if such special bail was originally requisite therein.

Your petitioner therefore prays this Honorable Court to proceed no further herein except to make the order of removal required by law and to accept said bond and to cause the record herein to be removed to the District Court of the United States in and for the Northern District of California; and it will ever pray.

[Seal] UNITED PROPERTIES COMPANY
OF CALIFORNIA (a Corporation),
By ALBERT HANFORD,
President.

R. P. HENSHALL,
Attorney for Petitioner, 1208 Merchants National
Bank Building, San Francisco, California. [9]

State of California,
City and County of San Francisco,—ss.

Albert Hanford, being first duly sworn, deposes and says:

I am an officer, to wit, the president of the United Properties Company of California, a corporation, the above-named petitioner, and that I am authorized to make this verification, and do so on behalf of said corporation; that as such officer I have read the above and foregoing petition and know the contents thereof, and the same is true of my own knowledge, except as to the matters that are therein stated on information or belief, and as to those matters I believe it to be true.

ALBERT HANFORD,

Subscribed and sworn to before me this 15th day of February, 1916.

[Seal]

CHARLES P. HOLTEN,
Notary Public in and for the City and County of
San Francisco, State of California. [10]

(Filed Feb. 15, 1916. H. I. Mulcrevy, Clerk. By H. Brunner, Deputy Clerk.)

*In the Superior Court of the State of California, in
and for the City and County of San Francisco,
Department No. —.*

No. 68,416.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,

Defendant.

Bond on Removal.

KNOW ALL MEN BY THESE PRESENTS:
That United Properties Company of California, a
corporation, as principal, and Illinois Surety Com-
pany, a corporation organized and existing under
and by virtue of the laws of the State of Illinois, as
surety, are held and firmly bound unto Mary Ellen
Kibbe in the sum of One Thousand Dollars (\$1,000),
for the payment of which, well and truly to be made
unto the said Mary Ellen Kibbe, the said United
Properties Company of California, and the said
Illinois Surety Company bind themselves, their suc-
cessors and assigns, jointly and firmly by these pre-
sents, upon the condition, nevertheless, that

WHEREAS, the said Mary Ellen Kibbe has com-
menced a suit of civil nature in the Superior Court
of the State of California, in and for the city and
county of San Francisco, against the said United
Properties Company of California; and

WHEREAS, the said United Properties Company of California, simultaneously with the filing of this bond, intends to file its petition in said court for the removal of said suit unto the District Court of the United States in and for the Northern District of California, according to the provisions of the Acts of Congress in such case made and provided:

[11]

NOW, THEREFORE, the condition of this obligation is such that if said petitioner, United Properties Company of California, a corporation, shall enter in said District Court of the United States in and for the Northern District of California, within thirty days from the date of filing said petition, a certified copy of the record in such suit, and shall well and truly pay all costs that may be awarded by the said District Court if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in such suit, if special bail was originally requisite therein, then the above obligation shall be void, but shall otherwise remain in full force and virtue.

IN WITNESS WHEREOF, the said United Properties Company of California has caused these presents to — executed and its corporate name and seal to be hereunto affixed by its president, and the said Illinois Surety Company has caused its corporate name and seal to be hereunto affixed by Harold M. Parsons, its attorney in fact, all on this

15th day of February, 1916.

UNITED PROPERTIES COMPANY OF
CALIFORNIA.

By ALBERT HANFORD,
ILLINOIS SURETY COMPANY,
By HAROLD M. PARSONS,
Its Attorney in Fact.

The foregoing undertaking is hereby approved by
me this 15th day of February, 1916.

GEO. A. STURTEVANT,

Judge of the Superior Court. [12]

(Filed Feb. 15, 1916. H. I. Mulcrevy, Clerk. By
H. Brunner, Deputy Clerk.)

*In the Superior Court of the State of California, in
and for the City and County of San Francisco.*

No. 68,416—Dept. No. —.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,

Defendant.

Order of Removal.

The defendant, United Properties Company of California, a corporation, having filed in this Court its petition and bond, as required by law, for the removal of this suit to the District Court of the United States, in and for the Northern District of Cali-

fornia; and, it appearing to the Court that written notice of said petition and bond for removal was given to the plaintiff and brought to her attention prior to filing the same herein; and, it appearing to the Court that said petition is sufficient in law to warrant said removal; and the said bond appearing sufficient, and the Court being fully advised.

IT IS ORDERED that the said bond be, and the same is hereby approved and accepted, and that the above-entitled cause be removed to the District Court of the United States, in and for the Northern District of California.

Done in open court this 15th day of February, 1916.

GEO. A. STURTEVANT,

Judge of the Superior Court of the State of California, in and for the City and County of San Francisco. [13]

State of California,
City and County of San Francisco,—ss.

I, H. I. Mulcrevy, County Clerk, of the City and County of San Francisco, State of California, and *ex-officio* Clerk of the Superior Court, in and for said city and county.

HEREBY CERTIFY the foregoing to be a full, true and correct Copy of the original complaint; notice of petition for removal; petition for removal; order of removal and bond on removal constituting all documents in action of Edmund J. Burkhardt vs. United Properties Company of California, a corporation, #70,212, on file in my office on the 2d day of March, A. D. 1916.

ATTEST my hand and seal of said court, this 2d day of March, A. D. 1916.

[Seal]

H. I. MULCREVY,
Clerk.

By H. Brunner,
Deputy Clerk.

(Documentary stamp canceled.) [14]

(Filed Feb. 15, 1916. H. I. Mulcrevy, Clerk. By H. Brunner, Deputy Clerk.)

Notice of Service of Filing of Record.

In this cause the defendant, United Properties Company of California, a corporation, having been regularly served with a notice of filing of record on removal from Superior Court, city and county of San Francisco, as appears from the record and papers on file herein, and having failed to appear and plead, answer or demur to plaintiff's complaint, within the time allowed by law, and the time for appearing and pleading, answering and demurring having expired;

Now, upon application of Herbert W. Erskine, attorney for plaintiff; the default of the defendant United Properties Company of California, a corporation, is hereby entered herein, according to law.

In testimony whereof, I have hereunto set my hand and seal of the District Court of the United States for the Northern District of California, this 4th day of April, A. D. 1916.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: No. 15,967½. In the District Court of the United States in and for the Northern District of California. Mary Ellen Kibbe, Plaintiff, vs. United Properties Company of California, a corporation, Defendant. Record of Documents Filed in the Superior Court (San Francisco). No. 68,416. Filed Mar. 2, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [15]

In the District Court of the United States in and for the Northern District of California, Second Division.

No. 15,967½.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALIFORNIA, a Corporation,

Defendant.

(Stipulation Setting Aside Default; Waiving Jury and Setting for Trial.)

It is hereby stipulated by and between the undersigned that the default of the defendant entered in the above-entitled action may be set aside, that the trial of the said action may be set for the earliest possible time before the Court without a jury, and that a trial by jury be and the same is hereby waived, that this action may be tried at the same time and in conjunction with the action of Burkhardt vs. United Properties Company, No. 15,968, and the ac-

tion of Burkhardt vs. United Properties Company
No. 15,979.

Dated April 26th, 1916.

HERBERT W. ERSKINE,
Attorney for Plaintiff.

R. P. HENSHALL,
Attorney for Defendant.

[Endorsed]: Filed Apr. 26, 1916. Walter B.
Maling, Clerk. [16]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,967 $\frac{1}{2}$.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,

Defendant.

Answer.

Now comes the defendant in the above-entitled ac-
tion and for its answer to complaint of plaintiff, on
file herein, shows as follows:

I.

It denies that on the 15th day of February, 1912,
or at any time, the defendant, for a valuable consid-
eration, or for any consideration, then undertook
and agreed, or undertook or agreed, in writing or
otherwise, to deliver to Ira M. Condit and Mary

Ellen Kibbe, or to their order, thirteen First Mortgage and Collateral Trust Five Per Cent Fifty Year Sinking Fund Gold Bonds of the denomination of \$1,000 each, or of any denomination, with all or with any interest coupons attached, said bonds to be issued under and secured by, or to be issued under or secured by a deed of trust, dated January 1, 1911, or dated at any time, then, or at any time in course of preparation made by the said defendant, United Properties Company of California, and so to be [17] delivered, or so to be delivered, under, as and when, or under, as or when, the said bonds, or any bonds or bond might be certified, issued and ready, or certified, issued or ready for delivery, and denies that the said alleged agreement, marked Exhibit "A" to the complaint, is a true and correct copy of said alleged agreement, or that there was any such agreement whatsoever made with the United Properties Company of California; and in this regard the defendant alleges that the facts with respect to the issuance of said certificate, so claimed to be owned by the plaintiff herein, are more particularly set forth in the first affirmative defense to the plaintiff's first cause of action, hereinafter stated and alleged, and not otherwise.

II.

Denies that had the Gold Bonds been delivered to said Ira M. Condit and Mary Ellen Kibbe, as alleged in said complaint, the said bonds would be worth the sum of \$13,000, or any other sum, in Gold Coin of the United States.

III.

Alleges that it has no information or belief upon the subject sufficient to enable it to answer the allegation contained in Paragraph III of said complaint, and basing its answer upon that ground, it denies that the said Ira M. Condit died on the 25th day of April, 1915, and on like ground denies that the plaintiff, Mary Ellen Kibbe is the sole owner and holder of the said agreement, referred to in said complaint; and on like ground denies that the said Mary Ellen Kibby mentioned in the said agreement is [18] the same person as the plaintiff herein; and on like ground denies that the true and correct name of said Mary Ellen Kibby, as mentioned in the said agreement, is "Mary Ellen Kibbe," or that the said Mary Ellen Kibbe is the daughter of the said Ira M. Condit.

IV.

Denies that by reason of the premises the plaintiff has been damaged in the sum of \$13,000, or in any other sum whatever. [19]

FIRST AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION.

And as and for a further and separate answer and defense to the alleged first count or cause of action, set forth in said complaint, this defendant alleges:

I.

That on or about February 16, 1911, certain of the officers of the said The United Properties Company of California issued to R. G. Hanford an instrument similar in form and tenor to the instrument set out by plaintiff in her first cause of action, but bearing

the number "47"; that said instrument was thereafter, to wit, on or about June 27, 1911, surrendered by the said R. G. Hanford and a new instrument, similar in form and tenor, numbered "498," issued by the said officers to the Hanford Investment Company, in lieu of part thereof; that the said instrument No. "498" was thereafter, to wit, on or about November 18, 1911, surrendered by the said Hanford Investment Company and a new instrument, similar in form and tenor, numbered "549," issued by the said officers to William Hammond, Jr., in lieu of part thereof; that the said instrument, No. "549," was thereafter, to wit, on or about November 21, 1911, surrendered by the said William Hammond, Jr., and a new instrument, similar in form and tenor, numbered "553," issued by the said officers to George R. Dickey, in lieu of part thereof; that the said instrument No. "553" was thereafter, to wit, on or about January 5, 1912, surrendered by the said Geo. R. Dickey, and a new instrument, similar in form and tenor, numbered [20] "616," issued by the said officers to R. B. Mott, in lieu of part thereof.

That on or about February 16, 1911, certain of the officers of the said The United Properties Company of California issued to R. G. Hanford an instrument similar in form and tenor to the instrument set out by plaintiff in her first cause of action, but bearing the number "45"; that the said instrument was thereafter, to wit, on or about March 11, 1911, surrendered by the said R. G. Hanford and new instruments, similar in form and tenor, numbered "73,"

“74,” “75,” “78” and “79,” respectively, issued by the said officers to R. G. Hanford in lieu of part thereof.

That on or about February 16, 1911, certain of the officers of the said The United Properties Company of California issued to R. G. Hanford an instrument similar in form and tenor to the instrument set out by plaintiff in her first cause of action, but bearing the number “48”; that the said instrument was thereafter, to wit, on or about March 11, 1911, surrendered by the said R. G. Hanford and new instruments, similar in form and tenor, numbered “86,” “96,” “98” and “99,” respectively, issued by the said officers to R. G. Hanford in lieu of part thereof.

That on or about February 16, 1911, certain of the officers of the said The United Properties Company of California issued to R. G. Hanford an instrument similar in form and tenor to the instrument set out by plaintiff in her first cause of action, but bearing the number “47”; that the said instrument was thereafter, to wit, on or about June 27, 1911, surrendered by the said R. G. Hanford and a new instrument, similar in form and tenor, numbered “497” issued by the said officers to Hanford Investment Company, in lieu of part thereof. [21]

That the aforesaid instruments, numbered “73,” “74,” “75,” “78,” “79,” “86,” “96,” “98,” “99” and “497,” respectively, were thereafter, to wit, on or about September 26, 1911, surrendered by the said R. G. Hanford and Hanford Investment Company, and a new instrument, similar in form and tenor,

numbered "528," issued by the said officers to R. G. Hanford, in lieu of part thereof; that the said instrument No. "528" was thereafter, to wit, on or about September 28, 1911, surrendered by the said R. G. Hanford and a new instrument, similar in form and tenor, numbered "529," issued by the said officers to R. B. Mott; that the said instrument No. "529" was thereafter, to wit, on or about November 28, 1912, surrendered by the said R. B. Mott and a new instrument, similar in form and tenor, numbered "562," issued by the said officers to R. B. Mott, in lieu of part thereof; that the said instruments, numbered "616" and "562," respectively, were thereafter, to wit, on or about February 15, 1912, surrendered by the said R. B. Mott, and a new instrument, numbered "660," a copy of which instrument is set out and sued upon by plaintiff herein in her first cause of action, was issued by the said officers to Ira M. Condit and Mary Ellen Kibby, referred to in plaintiff's complaint.

II.

That no resolution was ever passed or adopted by the Board of Directors of the said The United Properties Company of California, authorizing the execution or issuance of the said instrument No. 47, or of any of the instruments which, as alleged in paragraph I, were thereafter issued in lieu of part thereof [22] or the execution or issuance of the said instrument sued upon by the plaintiff.

III.

That no meeting of the stockholders of said The United Properties Company of California was ever

called or held at which any vote was ever taken authorizing the execution or issuance of the said instrument sued upon by the plaintiff or authorizing the execution or issuance of any of the said instruments preceding it, or authorizing the creation or the increase of any bonded indebtedness, or the execution or issuance of any bond or bond certificates, or the execution of the instrument sued upon by the plaintiff, or of any of the said instruments which preceded it, nor was the execution or issuance of the said instrument sued upon or any of the said instruments which preceded it, or the creation of any bonded indebtedness of the said The United Properties Company of California, or any of the acts above referred to ever approved by the written assent or assents of the stockholders of the said The United Properties Company of California holding two-thirds, or holding any proportion of the subscribed or issued capital stock thereof; nor was any attempt ever made by the directors or trustees or officers, or any of them, of said The United Properties Company of California, to comply with, or to conform to the provisions or requirements of Subdivisions 3, 4, or 5 of Section 359 of the Civil Code of the State of California, or the requirements or provisions of any of the laws of the State of California relative to the creation or increase of bonded indebtedness, or indebtedness of any kind, nor was the issuance of the said instrument sued upon, or any of the said instruments [23] which preceded it, ever ratified by the stockholders of the said The

United Properties Company of California, or by this defendant.

IV.

That the said R. G. Hanford at the time the said instrument bearing the number 47 was issued, as aforesaid, was a stockholder and member of the Board of Directors of the said The United Properties Company of California and the said R. G. Hanford had notice and knowledge of all of the facts connected with the issuance of the said instrument and knew that no attempt had been made to comply with the said provisions of Section 359 of the Civil Code of the State of California and that the said provisions of Section 359 of the Civil Code of the State of California had not been complied with in the respects hereinbefore specified, or in any respect, as required by any of the laws of the State of California.

SECOND AFFIRMATIVE DEFENSE TO
PLAINTIFF'S FIRST CAUSE OF ACTION.

As a further, separate and affirmative defense to plaintiff's first cause of action, the said defendant alleges:

I.

That defendant hereby refers to and adopts the allegations of the preceding affirmative defense to plaintiff's first cause of action as fully as if the same was set out herein.

II.

That if the said defendant was held liable, or a judgment [24] entered against it, for the amount prayed for by the plaintiff, or for any amount, not-

withstanding the said facts set out in defendant's first affirmative defense hereto, the defendant would thereby be deprived of property without due process of law, in violation of the Fourteenth Amendment of the Constitution of the United States.

THIRD AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION.

As a further, separate and affirmative defense to plaintiff's first cause of action, the said defendant alleges:

I.

That the said alleged cause of action is barred by the provisions of Section 359 of the Code of Civil Procedure of the State of California.

FOURTH AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION.

As a further, separate and affirmative defense to plaintiff's first cause of action, the said defendant alleges:

I.

That said alleged cause of action is barred by the provisions of Section 338 of the Code of Civil Procedure of the State of California. [25]

FIFTH AFFIRMATIVE DEFENSE TO PLAINTIFF'S FIRST CAUSE OF ACTION.

As a further, separate and affirmative defense to plaintiff's first cause of action, the said defendant alleges:

I.

That said alleged cause of action is barred by the provisions of Section 339 of the Code of Civil Procedure of the State of California.

WHEREFORE, the said defendant prays that the plaintiff take nothing by her said action, but that it may be dismissed with its costs and disbursements herein expended.

R. P. HENSHALL,
Attorney for Defendant. [26]

State of California,
City and County of San Francisco,—ss.

Albert Hanford, being first duly sworn, deposes and says:

That he is an officer, to wit, the president of The United Properties Company of California, a corporation, the defendant in the above-entitled action, and makes this affidavit on its behalf; that he has read the foregoing Answer and knows the contents thereof; that the same is true of his knowledge, except as to those matters which are therein stated on information or belief, and as to those matters, that he believes it to be true.

ALBERT HANFORD.

Subscribed and sworn to before me this 25th day of April, 1916.

[Seal] CHARLES R. HOLTON,
Notary Public in and for the City and County of
San Francisco, State of California.

Service of the within answer is hereby admitted this 26th day of April, 1916.

HERBERT W. ERSKINE,
Attorney for Plaintiff.

[Endorsed]: Filed Apr. 26, 1916. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [27]

*In the District Court of the United States in and
for the Northern District of California, Second
Division.*

No. 15,967½.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,

Defendant.

Admission of Certain Facts.

Whereas the above-entitled action is at issue and ready for trial;

Now, therefore, the following facts and matters are admitted:

On the 31st day of December, 1910, the articles of incorporation of the defendant were filed in the office of the Secretary of State of the State of Delaware and a certificate of incorporation was thereupon issued.

The names of the incorporators are:

Christian B. Zabriskie,

Ralph Ewart,

Harry W. Davis.

Thereafter the first meeting of the corporation was held on the 31st day of December, 1910, at the office of the Delaware Trust Company, in the city of Wilmington, State of Delaware; [28]

C. B. Zabriskie owning 44 shares of the common capital stock of the defendant;

Ralph Ewart owning 3 shares of the common capital stock of the defendant, and

Harry W. Davis owning 3 shares of the common capital stock of the defendant.

The incorporators of the said defendant were present. The by-laws were duly and properly adopted at the said meeting. A copy of the provisions of these by-laws which deal with,

1. The election of directors,
2. The powers of the board of directors,
3. The creation and powers of an executive committee of the board of directors,
4. The powers of the president of the corporation and chairman of the executive committee during the intervals between the meetings of the latter,
5. The powers of the vice-president, secretary, assistant secretaries and treasurer,
6. The time, place and manner of the holding of stockholders' meetings, and
7. The filling of vacancies caused by the absence of directors,

are set forth in Exhibit "A," which is hereto annexed, hereby referred to and made a part hereof for all purposes.

Thereafter at the said meeting subscriptions for common capital stock of the said defendant were read. The names of the subscribers with the amounts subscribed by each, respectively set after their names, are as follows:

F. M. Smith,	10 shares,
W. S. Tevis,	" "
R. G. Hanford,	" "

Gavin McNab, “ “
C. B. Zabriskie, 10 shares.
W. R. Alberger, “ “
Dennis Searles, “ “ and
Harry W. Davis, “ “ [29]

Thereupon an election of directors was held and the following persons were elected directors of the corporation to serve until the annual meeting of stockholders on the 25th day of October, 1911. The said directors so elected were:

F. M. Smith,
W. S. Tevis,
R. G. Hanford,
Gavin McNab,
C. B. Zabriskie,
W. R. Alberger,
Dennis Searles, and
Harry W. Davis.

The Board of Directors was then duly and properly authorized to issue the capital stock of the defendant company in such amounts and proportions as from time to time they should determine, in full or partial payment for cash, property, contracts, rights, services and labor.

Thereafter the meeting adjourned.

By the articles of incorporation the corporation is given the power to purchase and acquire the capital stock of other corporations. This is designated in the articles as one of the purposes of incorporation.

The capital stock of the defendant consists of 2,000,000 shares of the par value of \$100.00 a share,

divided into the following classes :

1. Preferred, 500,000 shares,
2. Convertible, 750,000 shares,
3. Common, 750,000 shares.

The articles provide that the holders of preferred and convertible stock shall not be entitled to a vote and shall not be entitled to participate in the affairs of the corporation ; that the right to vote at any meeting of the stockholders shall be exercised solely and exclusively by the majority holders of the common stock. [30]

On January 13th, 1911, in San Francisco, California, the first meeting of directors was held. The following officers were elected :

F. M. Smith,	President,
W. S. Tevis,	First Vice-President,
W. R. Alberger,	Second “ “
C. B. Zabriskie,	Treasurer,
Gavin McNab,	Chief Counsel.

The following executive committee was appointed :

F. M. Smith,
Gavin McNab,
C. B. Zabriskie,

The meeting was then adjourned until February 24th, 1911.

On February 24th, 1911, the adjourned meeting was held. All of the directors were present with the exception of Harry W. Davis.

On February 16th, 1911, certificate No. 45, similar in form, tenor, covenants and provisions to said Exhibit “A” of complaint, but calling for five hundred bonds of the par value of Five Hundred Thousand

(\$500,000) Dollars, was subscribed by W. R. Alberger, vice-president and by C. B. Zabriskie, Treasurer, the seal of the corporation was affixed and the name of R. G. Hanford was written into said certificate in the place where the names of Ira M. Condit and Mary Ellen Kibby appear on said exhibit "A." This certificate was delivered to said R. G. Hanford subsequent to February 24th, 1911. [31]

On February 16th, 1911, certificate No. 47, similar in form, tenor, covenants and provisions to said exhibit "A," but calling for two hundred (200) bonds of the par value of Two Hundred Thousand (\$200,000) Dollars, was subscribed by W. R. Alberger, vice-president, and by C. B. Zabriskie, treasurer, the seal of the corporation was affixed, the name of R. G. Hanford was written into said certificate in the place where the names of Ira M. Condit and Mary Ellen Kibby appear on the said exhibit "A." This certificate was delivered to said R. G. Hanford subsequent to February 24th, 1911.

On the 16th day of February 1911, certificate No. 48, similar in form, tenor, covenants and provisions to said exhibit "A," but calling for two hundred (200) bonds of the par value of two hundred thousand (\$200,000) dollars, was subscribed by W. R. Alberger, vice-president, and by C. B. Zabriskie, treasurer, the seal of the corporation was affixed and the name of R. G. Hanford was written into said certificate in the place where the names of Ira M. Condit and Mary Ellen Kibby appear on the said exhibit "A." This certificate was delivered to

said R. G. Hanford subsequent to February 24th, 1911.

That on or about March 11th, 1911, certificate Number Forty-five (45) was surrendered by the said R. G. Hanford to the United Properties Company and in lieu of part thereof certificates numbered [32] 73 for ten bonds,

- 74 “ “ “
- 75 “ “ “
- 78 “ five “ and
- 79 “ “ “

were signed by the officers of the corporation who signed certificate No. 45 or by officers duly appointed in the place thereof and the seal of the corporation was affixed to each of the said certificates numbered 73, 74, 75, 78 and 79; and each of them was issued to R. G. Hanford by the officers signing the same; each of said last-mentioned certificates was similar in form, tenor, provisions and covenants to Certificate No. 45.

That on or about June 27th, 1911, certificate No. 47 was surrendered by R. G. Hanford to the United Properties Company and in lieu thereof certificates numbered

- 497 for 100 bonds, and
- 498 “ “ “

were signed by the officers of the corporation, who signed certificate No. 47 or officers duly appointed in the place thereof and the seal of the corporation was affixed to each of the said certificates numbered 497 and 498 and each of them was issued by said officers to said Hanford Investment Company; each of

said last mentioned certificates was similar in form, tenor, provisions and covenants to Certificate No. 47.

That on or about March 11th, 1911, Certificate No. 48 was surrendered by the said R. G. Hanford to the United Properties Company and in lieu of part thereof certificates numbered

86 for 5 bonds,

96 " 10 "

98 " " " and

99 " " "

were signed by the officers of the corporation who signed certificate No. 48 or by officers duly appointed in the place [33] thereof and the seal of the corporation was affixed to each of the said certificates numbered 86, 96, 98 and 99; and each of them was issued by said officers to said R. G. Hanford, each of said last mentioned certificates was similar in form, tenor, provisions and covenants to exhibit "A" and to Certificate No. 48.

That on or about September 26th, 1911, the aforesaid certificates numbered 73, 74, 75, 78, 79, 86, 96, 98, 99 and 497, respectively, were surrendered by R. G. Hanford and the Hanford Investment Company to the United Properties Company and in lieu of part of said last mentioned certificates a new certificate numbered 528 for 175 bonds, similar in form, tenor, provisions and covenants to said certificates numbered 45, 47 and 48, was signed by the officers of the United Properties Company signing certificates 45, 47 and 48, or by officers duly appointed in the place thereof, and with the seal of the corporation affixed, was issued by said officers to R. G. Hanford.

That thereafter on or about September 28th, 1911, said R. G. Hanford surrendered to the United Properties Company the said certificate No. 528 and in lieu of part thereof, at said R. G. Hanford's request, a new certificate No. 529 for thirty-seven bonds, similar in form, tenor, provisions and covenants to certificates numbered 45, 47 and 48, was signed by the said officers signing certificates numbered 45, 47 and 48, or by officers duly appointed in the place of the officers signing said last mentioned certificates, and with the seal of the corporation affixed thereto, the said certificate No. 529 was issued by the said officers to R. B. Mott.

That on or about the 28th day of November, 1911, the said R. B. Mott surrendered to the said United Properties Company the said certificate No. 529 and in lieu of part thereof a [34] certificate numbered 562 for one bond, similar in form, tenor, provisions and covenants to certificates numbered 45, 47 and 48, signed by the officers signing certificates numbered 45, 47 and 48 or officers duly appointed in the place thereof, was issued by said officers to said R. B. Mott.

That thereafter, on or about the 15th day of February, 1912, the said R. B. Mott transferred, assigned and set over to Ira M. Condit and Mary Ellen Kibbe as joint owners or to the survivor of them the said certificate No. 562.

That on or about the 28th day of November, 1911, the Hanford Investment Company surrendered to the United Properties Company certificate No. 498 and in lieu of part thereof, certificate No. 549 for twenty-five bonds, similar in form, tenor, provisions

and covenants to certificate No. 47 and signed by the officers signing certificate No. 47 or officers duly appointed in the place thereof and having the seal of the United Properties Company affixed thereto was issued by said officers to William Hammond, Jr.;

That thereafter on November 28th, 1911, the said William Hammond, Jr., surrendered to the United Properties Company certificate No. 549 and in lieu of part thereof, certificate No. 553 for twenty-five bonds, similar in form, tenor, provisions and covenants to certificate No. 549 and signed by the officers signing certificate No. 549 or officers duly appointed in the place thereof and having the seal of the United Properties Company affixed thereto was issued by said officers to Leo R. Dickie; that said Leo R. Dickie paid the said William Hammond, Jr., for said certificate No. 553 a good, sufficient and valuable consideration.

That thereafter on January 5th, 1912, the said Leo R. Dickie surrendered to the United Properties Company certificate [35] Number Five Hundred and Fifty-three (553) and in lieu of part thereof, certificate Number Six Hundred and Sixteen (616) for twelve (12) bonds, similar in form, tenor, provisions and covenants to Certificate Number Five Hundred and Fifty-three (553) and signed by the officers signing Certificate Number Five Hundred and Fifty-three (553) or officers duly appointed in the place thereof and having the seal of the United Properties Company affixed thereto was issued by said officers to R. B. Mott; that said R. B. Mott paid the said Leo R. Dickie for said Certificate Number

Six Hundred and Sixteen (616) a good, sufficient and valuable consideration.

That thereafter the said R. B. Mott transferred, assigned and set over to Ira M. Condit and Mary Ellen Kibbe as joint owners or to the survivor of them the said Certificate Number Six Hundred and Sixteen (616).

That on or about February 15th, 1912 said Condit and said Kibbe surrendered to the said United Properties Company Certificates Numbered Six Hundred and Sixteen and Five Hundred and Sixty-two (562) and in lieu thereof a new certificate numbered Six Hundred and Sixty (660), a copy of which is set out in full by the plaintiff in her complaint on file herein, was signed by the officers signing bond certificate Number Forty-seven (47) or officers duly appointed in the place thereof, the seal of the corporation was affixed and the said certificate was issued to said Ira M. Condit and Mary Ellen Kibbe as joint owners or to the survivors of them. [36]

Interest was paid on the indebtedness evidenced by that part of certificates numbered 45, 47 and 48 which became merged by virtue of the surrender and re-issuance above referred to into certificate No. 660 for thirteen bonds of the par value of \$1,000 each which certificate is the one sued on in the above-entitled action. This interest was paid in semi-annual installments at the rate of Five per cent per annum for the following periods:

from January 1st, 1911 to July 1st, 1911,

from July 1st, 1911 to January 1st, 1912,

from January 1st, 1912 to July 1st, 1912, and

from July 1st, 1912 to January 1st, 1913.

The said Kibbe and Condit received the installments of interest paid for the period from January 1st, 1912 to July 1st, 1912, from July 1st, 1912, to January 1st, 1913. Part of the first installment of interest was paid on July 1st, 1911, the balance thereof on November 18th, 1911, the second installment on the 2nd of January, 1912, the third installment on July 6th, 1912 and the fourth installment on January 9th, 1913.

During the time that each of the certificates hereinbefore referred to were issued there was kept in the office of the Company a certificate book containing documents numbered from 1 to 1500 inclusive, of the same form, tenor and containing the same provisions, terms and covenants contained in the certificate sued on, except that the name of the holder, the amount thereof and the date thereof were left blank and there were no signatures thereon and the seal of the corporation was not [37] affixed thereto. Attached to each of these certificates was a stub. When a certificate was issued, the name of the holder, the number of the certificate, the amount thereof and the date of issuance was written on the stub and then the certificate was detached from the stub and given to the holder after having been signed by the officers of the corporation and after having the seal affixed. When a certificate so issued was surrendered it was again affixed to its proper stub and the officers receiving the same noted on the stub that the certificate had been returned and the number of the certificate or certificates which were issued in lieu thereof. Certificates from number 1 to 1500 for

various numbers of bonds and in various amounts were issued, surrendered and re-issued.

These transactions took place during the years 1911, 1912, and 1913. All of the directors knew that these transactions were taking place; all of the directors had at various times received certain of these certificates. The said directors at all times during the last mentioned period held a majority in number of the shares of the capital stock issued by the said corporation.

On or about September 1st, 1911 F. M. Smith and W. S. Tevis and R. G. Hanford entered into an agreement in writing a copy of which is hereto annexed, marked exhibit "D" and is hereby referred to and made a part hereof for all purposes. [38]

On the 25th day of April, 1915, the said Ira M. Condit died in the county of Alameda, State of California; the plaintiff, Mary Ellen Kibbe is the sole owner and holder of the certificate sued upon and is the same person as the Mary Ellen Kibby mentioned in the said certificate; she is the daughter of the said Ira M. Condit.

The laws and statutes of the State of Delaware during the period from January, 1910 to date in reference to corporations are hereby referred to and made a part hereof for all purposes just as if the said laws and statutes had been offered and admitted in evidence at the trial of this action. There has been no law or statute during the last mentioned period in the State of Delaware requiring a corporation before creating or increasing any bonded indebtedness to comply with any proceedings or requirements

similar or in substance or effect alike to those set forth in Section 359 of the Civil Code of the State of California. There has never been any laws or statute of the State of Delaware requiring a two-thirds vote of the stockholders or the written assent of 2/3 of the stockholders in order to create or increase a bonded indebtedness of a corporation.

It is stipulated that the foregoing statements of facts are admitted subject to any objection that either party may have thereto on the ground that the evidence of any of the said facts is incompetent, irrelevant or immaterial.

It is further stipulated that upon the trial of the action, either of the parties thereto, may introduce such other and further evidence supplementing the statement of facts contained in the forgoing which they may care to present subject, however, to any objection that such other and further evidence is incompetent, irrelevant and immaterial, and provided that if either [39] party intends to introduce such other and further evidence, he shall notify the other party of his intention to introduce such other and further evidence at least five days before the date set for the trial of the said action.

Dated: June 24th, 1916.

HERBERT W. ERSKINE,
Attorney for Plaintiff.

R. P. HENSHALL,
Attorney for Defendant. [40]

Exhibit "A" to Admission of Certain Facts.

No. 4. The property and business of the company shall be managed and controlled by a Board

of eight directors, who shall at all times be stockholders, and at least one of whom shall be an actual resident of Delaware.

They shall hold office until the next annual meeting of the stockholders or until others are elected and qualified in their place and stead.

The number of directors may at any time be increased by an affirmative vote of a majority of the entire Board of Directors, at a special meeting called for that purpose, and in case of any such increase, the Board of Directors, shall have power to elect such additional Directors to hold office until the next meeting of stockholders, and until the successors of such additional directors so elected, are elected and qualified.

If the office of any Director becomes vacant, by reason of death, resignation or disqualification, the remaining Directors, by a majority vote, may elect a successor, who shall hold office for the unexpired term and until his successor is elected.

POWERS OF THE DIRECTORS.

No. 5. The Board of Directors shall have general management of the business of the Company, shall exercise the powers necessary to accomplish the purposes and object for which it is organized, as specified in its certificate of incorporation, and in addition to the powers and authorities by these By-laws expressly conferred upon them, may exercise all such powers and do all such acts and things, as may be exercised or done by the company, but subject, nevertheless, to the provisions of the Statute, of the Charter and of these [41] By-laws, and to any regula-

tion from time to time made by the stockholders, provided that no regulation so made shall invalidate any prior act of the Board of Directors which would have been valid if such regulation had not been made.

Without prejudice to the general powers conferred by the last preceding clause the powers conferred by the Certificate of Incorporation, and the other powers conferred by these By-laws, it is hereby expressly declared that the Board of Directors shall have the following powers, that is to say :

To purchase or otherwise acquire, for the Company any property, rights, or privileges which the company is authorized to acquire, at such prices and on such terms and conditions, and for such consideration as they may see fit.

At their discretion to pay for any property or rights acquired by the Company either wholly or partially in money or in stock, bonds debentures or other securities of the company.

To appoint, and at their discretion to remove or suspend, subordinate managers, officers, assistants, clerks agents and servants, permanently or temporarily, and to determine their duties, and fix, and from time to time change, their salaries or emoluments, and to require security in such instances and in such amounts as they think fit.

To confer by resolution, upon any officer of the Company the right to choose, appoint, remove or suspend such subordinate officers, agents or factors, and to determine their duties and fix, and from time to time change their salaries and emoluments.

To appoint any person or persons to accept and

hold in trust for the Company any property belonging to [42] the Company, or in which it has an interest, or for any other purpose, and to execute and do all such duties and things as may be requisite in relation to any such trust.

To create, make and issue mortgages, bonds, deeds of trust, trust agreements and negotiable or transferable instruments and securities, secured by mortgage or otherwise, and to do other acts and things necessary to effectuate the same.

To determine who shall be authorized to sign on the Company's behalf, bills, notes, receipts, acceptances, endorsements checks, releases, contracts and documents.

From time to time to provide for the management of the affairs of the Company at home or abroad in such manner as they think fit, and in particular, from time to time to delegate any of the powers of the Board of Directors to any committee, officer, or agent, and to appoint any persons to be the agents of the Company with such powers (including the power to sub-delegate) and upon such terms as may be determined.

MEETINGS OF THE STOCKHOLDERS.

No. 6. Meetings of the stockholders shall be held at the office of the Company in the City of San Francisco, State of California, or the City of Wilmington, State of Delaware, as may be determined by the Board of Directors.

Holders of Common Stock may vote at all meetings either in person or by proxy in writing. All proxies shall be filed with the Secretary of the meet-

ing before being voted upon. [43]

A majority in amount of Common Stock issued and outstanding, represented by the holders in person or by proxy, shall be requisite at all meetings to constitute a quorum for an election of Directors or the transaction of any other business.

The annual meeting of the stockholders shall be held on the 25th day of October at two o'clock, in the afternoon in each year, beginning in the year Nineteen Hundred and Eleven, if not a legal holiday, and, if a legal holiday, then on the day following, when they shall elect, by a plurality vote, by ballot, a board of eight (8) Directors to serve for one year, and until their successors are elected or chosen and qualified, each holder of Common Stock being entitled to one vote for each share of Common Stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

MEETINGS OF DIRECTORS.

No. 7. The newly elected Directors shall meet as soon as possible after their election, at the office of the Company, in the City of San Francisco, State of California, for the purpose of organization and otherwise, and no notice of such meeting, provided a majority of the whole board shall be present, shall be necessary to the newly elected Directors in order to legally constitute the meeting.

At the first meeting after their election the Directors shall elect from among their number, a President, a First Vice-President and three other Vice-Presidents, and shall also elect a Treasurer, to hold

office for one year and until others are elected and qualified. A Secretary shall be elected or appointed who may or may not be a Director, and whose term of service shall be subject to the pleasure of the [44] Board of Directors.

Regular meetings of the Board of Directors may be held without notice at such time and place as may be determined, from time to time by resolution of the Board.

Notice of regular meetings may be mailed to each Director at his last known postoffice address by the Secretary at least five days previously.

Five Directors shall be necessary at all meetings to constitute a quorum for the transaction of business.

Special meetings of the Board may be called by the President on one day's notice to each Director, either personally or by wire; special meetings may be called in like manner on the request in writing of four Directors.

STANDING COMMITTEES.

No. 8. The Board of Directors may appoint from their number, Standing Committees and may invest them with all their own powers, subject to such conditions as they may prescribe, and all committees so appointed shall keep regular minutes of their transactions and shall cause them to be recorded in books kept for that purpose in the office of the Company, and shall report the same to the Board of Directors at their next regular meeting.

OFFICERS OF THE COMPANY.

No. 9. The officers of the Company shall consist

of a President, a First Vice-President and three other Vice-Presidents, Secretary, Treasurer, and such other subordinate officers as may from time to time be elected or appointed by the Board of Directors.

One person may hold the office of Secretary and Treasurer, and if deemed advisable by the Board of Directors, a Vice-President may hold the offices of Vice-President Treasurer or [45] a Vice-President and Secretary, but not the offices of Vice-President, Secretary and Treasurer.

OFFICERS HOW CHOSEN.

No. 10. At the first meeting after their election the Directors shall elect annually from among their own number a President and a First Vice-President and three other Vice-Presidents, and a Treasurer, to hold office for one year and until their successors are elected and qualified. They shall not be subject to removal during their respective terms of office except for cause, nor shall their term of office be diminished during their tenure. The Board of Directors shall also appoint or elect a Secretary whose term of office shall be subject to the pleasure of the Board.

DUTIES OF THE PRESIDENT.

No. 11. The President shall be the chief executive officer of the Company; he shall preside at all meetings of the Directors, he shall have general and active management of the business of the company; he shall see that all orders and resolutions of the Board of Directors are carried into effect; he shall execute all contracts and agreements authorized by the Board of Directors; shall keep in safe custody

the seal of the Company, and, when authorized by the Board of Directors to affix the seal to any instrument requiring the same, and the seal when so affixed shall be attested by the signature of the Secretary.

He shall sign all certificates of stock.

He shall have general supervision and direction of all the other officers of the Company, and shall see that their duties are properly performed.

He shall submit a report of the operations of the Company for the fiscal year to the Board of Directors at their first regular meeting in each year, and to the stockholders at [46] their annual meeting, and from time to time shall report to the Board of Directors all matters within his knowledge which the interests of the Company may require to be brought to its notice.

He shall be *ex-officio* a member of all standing committees and shall have the general powers and duties of supervision and management usually vested in the office of the President of a corporation.

VICE-PRESIDENT.

No. 12. The First Vice-President shall be vested with all the powers and authority, and shall perform all the duties and exercise all the functions of the President, in his absence from the principal place of business, to wit; the State of California, or in case of the inability of the President, for any reason, to act; and in the event of absence or inability for any reason, of both the President and First Vice-President all the powers, duties, authority and functions of the President shall devolve upon one of the other Vice-Presidents, who shall be designated by

the First Vice-President and in the event of the absence from the State of California or the inability for any reason of the Vice-President thus selected to act, he shall in like manner designate a Vice-President to act as President.

SECRETARY.

No. 13. The Secretary shall attend all sessions of the Board of Directors and act as Clerk thereof and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform all duties for the Standing Committees when required.

He shall see that proper notice is given of all meetings of the holders of Common Stock of the Company, and of the Board of Directors, and shall perform such other duties as [47] may be prescribed from time to time by the Board of Directors or the President. He shall be sworn to the faithful discharge of his duty.

TREASURER.

No. 14. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all money and other valuable effect in the name and to the credit of the Company, in such depositories as may be designated by the Board of Directors.

He shall disburse the funds of the Company as may be ordered by the Board of Directors, or the President, taking proper vouchers for such disbursements, and shall render to the President, and Directors, at the regular meetings of the Board of Directors or whenever they may require it, an account of

all his transactions as Treasurer and of the financial condition of the Company.

If required by the Board of Directors, he shall give the Company a bond in form and in a sum with security satisfactory to the Board of Directors, for the faithful performance of the duties of his office, and the restoration to the Company in case of his death, resignation or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession belonging to the Company. He shall perform such other duties as the Board of Directors may from time to time prescribe or require.

Certificates of stock when signed by the President shall be countersigned by the Treasurer. He shall keep the accounts of the stock registered and transferred in such form and manner and under such regulations as the Board of Directors may prescribe.
[48]

DUTIES OF OFFICERS MAY BE DELEGATED.

No. 16. In case of the absence of any officer of the Company, the Board of Directors may delegate the powers or duties of such officer to any other officer or to any Director for the time being.

EXECUTIVE COMMITTEE.

No. 25. The Board of Directors may appoint annually an Executive Committee of three persons from their own number.

The executive Committee shall not have authority to alter or amend the By-laws, but shall exercise all other powers of the Board of Directors between the meetings of said Board.

The executive Committee shall appoint a Secretary, who shall keep regular minutes of the actions of said Committee, and report the same to the Board of Directors and the Board shall adopt such report as a part of its proceedings.

The Board of Directors may designate for such Committee, a Chairman, who shall continue to be Chairman of the Committee during the pleasure of the Board.

The Board of Directors shall fill vacancies in the Executive Committee by election from the Directors, and at all times it shall be the duty of the Board of Directors to keep the membership of such committee full, with due regard to the qualifications necessary for such membership.

All action by the Executive Committee shall be reported to the Board of Directors at its meeting next succeeding such action.

The Executive Committee shall fix its own rules of procedure, and shall meet where and as provided by such rules, or by resolution of the Board of Directors, but in every case, the presence of at least two members shall be necessary to constitute a quorum.

[49]

In every case the affirmative vote of a majority of all the members of the Executive Committee present at the meeting, shall be necessary to the adoption of any resolution.

The powers of this Executive Committee, during intervals between meetings of the Board of Directors shall extend to the purchase of property and the execution of legal instruments with or without the cor-

porate seal, in such manner as such Committee shall deem to be best for the interests of the Company, in *all case* in which specific directions have not been given by the Board of Directors.

During the intervals between the meetings of the Executive Committee, and subject of its review, the President of the Board of Directors and the Chairman of the Executive Committee together, shall possess and may exercise any of the powers of the Committee, except as from time to time shall be otherwise provided by resolution of the Board of Directors.

CONTRACTS.

No. 29. The Board of Directors in its discretion may submit any contract or act for approval or ratification at any annual meeting of the holders of common stock, or at any meeting of such stockholders called for the purpose of considering any such act or contract; and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the Common Stock of the Company which is present in person or by proxy at such meeting (provided that a lawful quorum of holders of Common Stock be there represented in person or by proxy) shall be as valid as binding upon the Company and upon all the stockholders as though it has been approved or ratified by every stockholder of the company. [50]

Exhibit "D" Agreement—Between Smith et al. and Hanford.

Agreement made this ——— day of September, 1911 between F. M. Smith of the City of Oakland, County of Alameda, State of California, W. S. Tevis

of the City of Bakersfield, County of Kern and State aforesaid, and R. G. Hanford of the City and County of San Francisco, State of California,

WITNESSETH:

That whereas said F. M. Smith did on or about the 25th day of October, 1910, enter into an agreement with said W. S. Tevis and said R. G. Hanford by the terms whereof said F. M. Smith did among other things agree to deliver to said R. G. Hanford or to the United Properties Company of California, a corporation, as his nominee not less than 75% of the total issued shares of the Oakland Terminal and San Francisco, Oakland and San Jose Consolidated Railways and of each of them,

And whereas the total issued shares of said Company are as follows:

Oakland Traction Company, 108,750, shares of common

70,500 shares of preferred.

San Francisco Oakland and San Jose Consolidated Railways,

27,500, shares of common

50,000, shares of preferred.

And whereas the amount of stocks to be delivered under said agreement by said F. M. Smith were as follows:

Oakland Traction Company, 97,437.3 shares of common

37,000.3 shares of preferred.

San Francisco, Oakland and San Jose Consolidated Railways,

26,078.5 shares of common and
32,050 shares of preferred. [51]

And whereas on the 18th day of August, 1911, deliveries had been made as follows:

Oakland Traction, 94,801 shares of common
18,337 shares of preferred.

San Francisco and San Jose Consolidated Railways,
27,300 shares of common
19,775 shares of preferred.

And whereas, certain extensions have from time to time been granted to said Smith, and he is desirous of further extension of time, in consideration of the premises and of other good and sufficient considerations, Tevis and Hanford hereby extend the time for delivery of the shares of stock remaining to be delivered by F. M. Smith until the first day of September 1912, and the said Smith hereby agrees that he will, on or before said date, make delivery of a sufficient number of shares of the capital stock of said Traction Co. and said San Francisco, Oakland and San Jose Consolidated Railway to make, together with those already delivered, not less than 66 $\frac{2}{3}$ % of the total issued stock of each of said companies, and as soon as possible thereafter, and in no event later than the first day of March, 1913, to deliver the entire balance remaining to be delivered by him, that is to say, sufficient to make 75% of the total issued stock of each of said companies, as hereinabove set forth and that he will at the time of such deliveries accept therefor the securities exchangeable therefor under said agreement hereinabove referred to between said F. M. Smith, W. S. Tevis and R. G. Hanford.

IN WITNESS WHEREOF, the parties hereto have hereunto signed their names the day and year first above-written.

(Signed) F. M. SMITH.
 W. S. TEVIS.
 R. G. HANFORD.

[Endorsed]: Filed Aug. 22, 1916. Walter B. Mal-
ing, Clerk. [52]

*In the Southern Division of the United States Dis-
trict Court, in and for the Northern District of
California, Second Division.*

No. 15,967½.

MARY ELLEN KIBBE,

Plaintiff,

vs.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,

Defendant.

Judgment.

This cause having come on regularly for trial upon the 5th day of September, A. D. 1916, before the Court sitting without a jury, a trial by jury having been specially waived by written stipulation of the attorneys for the respective parties, Herbert W. Erskine, Esq., appearing on behalf of plaintiff, and R. P. Henshall, Esq., appearing on behalf of defendant; and oral and documentary evidence having been introduced on behalf of the plaintiff and no evidence having been offered on behalf of the de-

endant, and the cause having been submitted to the Court for consideration and decision; and the Court, after due deliberation, having rendered its oral opinion and ordered that judgment be entered in favor of plaintiff and against defendant in the sum of \$15,925 and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that Mary Elen Kibbe, plaintiff, do have and recover of and from United Properties Company of California, a corporation, defendant, the sum of Fifteen Thousand Nine Hundred Twenty-five and 00/100 Dollars (\$15,925), together with her costs herein expended taxed at \$23.03.

Judgment entered July 9, 1917.

WALTER B. MALING,
Clerk.

A True Copy, Attest:

[Seal]

WALTER B. MALING,
Clerk.

[Endorsed]: Filed July 9, 1917. Walter B. Mal-
ing, Clerk. [53]

*In the Southern Division of the United States Dis-
trict Court for the Northern District of Cali-
fornia.*

No. 15,967½.

MARY ELLEN KIBBE

vs.

UNITED PROPERTIES CO. OF CAL.

Clerk's Certificate to Judgment-Roll.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment Roll in the above-entitled action.

ATTEST my hand and the seal of said District Court, this 9th day of July, 1917.

[Seal] WALTER B. MALING,
Clerk.

[Endorsed]: Filed July 9, 1917. Walter B. Maling, Clerk. [54]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,967½.

MARY ELLEN KIBBE,

Plaintiff,

vs.

THE UNITED PROPERTIES COMPANY OF CALIFORNIA, a Corporation, and ALBERT HANFORD, W. S. TEVIS, C. E. GILMAN, LEO R. DICKEY, M. O'CONNELL and HARRY W. DAVIS, as Trustees, Acting for and on Behalf of Said THE UNITED PROPERTIES COMPANY OF CALIFORNIA, a Defunct Corporation, Substituted Defendants Herein,

Defendants.

Order Substituting Trustees as Defendants.

It appearing to the Court that The United Properties of California, a corporation, has forfeited its charter under the laws of the State of California for the non-payment of taxes in the month of March, 1917, and that Albert Hanford, W. S. Tevis, C. E. Gilman, Leo R. Dickey, S. J. Bell, M. O'Connell and Harry W. Davis were the directors in office at the time of such forfeiture and are the persons charged by law as trustees with the duty of winding up its affairs;

NOW, THEREFORE, on motion of R. P. Henshall, IT IS ORDERED: That Albert Hanford, W. S. Tevis, C. E. Gilman, Leo R. Dickey, S. J. Bell, M. O'Connell and Harry W. Davis, as trustees for and on behalf of The United Properties Company of California, a defunct corporation, be, and they hereby are substituted as defendants in the above-entitled action in place and stead of the original defendant, The United Properties Company of California [55] and that any and all proceedings hereafter be taken and had in the name of said Albert Hanford, W. S. Tevis, C. E. Gilman, Leo R. Dickey, S. J. Bell, M. O'Connell and Harry W. Davis, as trustees for and on behalf of said The United Properties Company of California, a defunct corporation.

Done and dated this 7th day of January, 1918.

OSCAR A. TRIPPET,

Judge.

[Endorsed]: Filed Jan. 7, 1918. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [56]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,967½.

MARY ELLEN KIBBE,

Plaintiff,

vs.

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Corporation, and AL-
BERT HANFORD, W. S. TEVIS, C. E.
GILMAN, LEO R. DICKEY, M. O'CON-
NELL and HARRY W. DAVIS, as Trus-
tees, Acting for and on Behalf of Said THE
UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Defunct Corporation,
Substituted Defendants Herein,

Defendants.

**Engrossed Bill of Exceptions to be Used on
Defendant's Writ of Error to the United States
Circuit Court of Appeals. [57]**

BE IT REMEMBERED that the above-entitled
action came on duly and regularly for hearing be-
fore the above-entitled court on Tuesday, Septem-
ber 5, 1916, Hon. William C. Van Fleet, Judge, sit-
ting without a jury, a jury trial of said action hav-
ing been duly waived in the writing signed by the
parties and filed in the action as required by law.

That such actions were by an order of the Court consolidated for trial, which said order was duly given and made in said actions, and in each of them, prior to the commencement of the trial thereof by consent of the parties hereto.

That this bill of exceptions is presented and is settled as a bill of exceptions in each of said actions.

On the trial of said action Herbert W. Erskine, Esq., appeared as attorney for the plaintiff, and R. P. Henshall, Esq., as attorney for the defendant, and thereupon the following proceedings were had.

Testimony of William S. Tevis, for Plaintiff.

WILLIAM S. TEVIS, a witness, called and sworn on behalf of plaintiff, testified as follows:

I am not at the present time an officer in The United Properties Company. I was vice-president of The United Properties Company. I do not recall the date when I resigned. I believe it was up to and through the year 1913. I am a stockholder of that company and I know the signature of Mr. Raycraft, Mr. C. R. Alberger, Mr. W. R. Alberger, Mr. F. W. Frost and Mr. J. K. Moffitt

Mr. HENSHALL.—I will admit, subject to my objection stated in the admission of facts, that the signatures upon any certificates that you produce, Mr. Erskine, are the correct [58] signatures of the persons of whom they purport to be the signatures and I will admit that at the time these officers signed these certificates they were the officers they purported to be, as represented in the certificates; that the seal is affixed to each one of the certificates and that any certificates that you offer in evidence are the

certificates sued on in this action.

The certificates referred to in the complaint on file in the above-entitled action were offered in evidence and admitted in evidence and read into evidence; that they are similar to the exhibits attached to and made a part of the complaint on file except as to dates, amounts, numbers and signatures; that they were for the amounts, bore the same numbers and dates and were signed by the same officers as those referred to and described in the complaint on file in the above-entitled action, and that all of said certificates bore the seal of the said defendant corporation; that the said certificates correspond in dates, amounts, numbers, names of payees and names of officers signing the same, with the certificates referred to in the allegations of the complaint on file in the above-entitled action.

The WITNESS (Continuing.) I cannot say that I am familiar with the minutes of the meetings of the directors of the United Properties Company, but I would recognize the minute-book if I saw it. The book that is shown me is a copy of the minutes of the directors; it is one of the copies, one of the originals; I believe we kept three original copies of the minutes; it was, in other words, a triplicate original. [59]

Mr. ERSKINE.—Will you admit that on February 24, 1911, the meeting was held, and admit the minutes of it?

Mr. HENSHALL.—I admit that, but I interpose the objection that it is immaterial, irrelevant and incompetent.

Mr. ERSKINE.—I will offer in evidence these minutes of the special meeting of the Board of Directors of the United Properties Company, at San Francisco, Friday, February 24, 1911, and ask that they be considered as read.

Mr. HENSHALL.—I will make the same objection. My objection is that it does not have a tendency to show that the company was authorized to issue the instruments upon which suit was brought.

The COURT.—I will take the evidence subject to the objection.

Mr. HENSHALL.—Exception.

DEFENDANT'S EXCEPTION NO. 1.

The minutes of the special meeting referred to were thereupon read in evidence, subject to the objection aforesaid, and were and are in the words and figures following, to wit: [60]

Minutes of Special Meeting of Board of Directors of United Properties Co. held February 24, 1911.

“FOURTH AND SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE UNITED PROPERTIES COMPANY OF CALIFORNIA.

San Francisco, California,
Friday, February 24, 1911.

The Special Meeting of the Board of Directors of THE UNITED PROPERTIES COMPANY OF CALIFORNIA was held on Friday, February 24, A. D. 1911, at the hour of 2:30 o'clock in the afternoon of said day, at the office of said corporation, same being located at room number 501 on the fifth

floor of the building known as 57 Post Street, in the city and County of San Francisco, State of California. Said special meeting was called and held pursuant to a written notice thereof given by the President of the corporation, which said written notice was duly served upon each member of the Board of Directors by the Secretary of the corporation. Said meeting was called and held for the purpose of transacting any and all business which said Board of Directors had power to transact at any regular meeting thereof.

There were present Messrs. F. M. Smith, William S. Tevis, R. G. Hanford, C. B. Zabriskie, Gavin McNab, W. R. Alberger, Dennis Searles, constituting a majority of the Board.

Absent: E. W. Davis.

Minutes of the third and regular meeting of the Board of Directors, held on the 14th day of February, 1911, were read and approved.

On motion duly made and seconded, it was

RESOLVED, that the minutes of all meetings held by the incorporators, stockholders and Board of Directors, or Executive Committee, of this corporation, be written out in triplicate by the Secretary of this corporation, the first triplicate *to kept* in the office of the company, the second triplicate in the safe deposit box of the Company, in the City and County of San Francisco, State of California, and the third triplicate in the safe deposit box of the Company located in the City of Oakland, County of Alameda, State of California, or such other de-

posit boxes as may be hereinafter rented by the Company for this purpose;

FURTHER RESOLVED, that the book or books containing the second triplicate of such minutes, be designated as Second Triplicate Book of Minutes of the meetings of the Boards of Directors, Stockholders, Executive Committee, or otherwise, of said corporation, as the case may be;

FURTHER RESOLVED, that the book or books containing the third triplicate of such minutes, be designated as Third Triplicate Book of Minutes of the meetings of the Board of Directors, Stockholders, Executive Committee, or otherwise, of said corporation, as the case may be;

FURTHER RESOLVED, that the book of By-Laws of said corporation be made in triplicate, and kept in the same manner by the Secretary of the corporation.

Upon motion duly made and seconded, it was

RESOLVED, that F. W. Frost be and he is hereby appointed Assistant Treasurer of The United Properties Company of California. [61]

RESOLVED, that First Vice-President, W. S. Tevis, and Vice-President, R. G. Hanford, be and they are hereby authorized and empowered, on behalf of this Company, to enter into negotiations for the purpose of acquiring such electric lighting and distributing, or other, plants or properties and franchises as they may think desirable; or to acquire shares of stock in corporations owning or controlling such plants or properties or franchises.

The President thereupon laid before the Board a

communication from R. G. Hanford, wherein he offered to transfer to this corporation certain shares of the capital stock of the following corporations, to-wit:

East Shore and Suburban Railway Company,
The Union Water Company of California,
United Light and Power Company,
Sierra Water and Supply Company,
The Sacramento Short Line,
The San Jose Short Line,
Pacific Terminal Company,
Santa Clara Land and Water Company,
Consolidated California Land Company,
Bay Cities Water Company.

at and for the price of \$145,346,730, payable as follows, to-wit:

\$57,579,200, in Common Shares of the capital stock of this corporation, at par.

\$33,601,400, in Preferred Shares of the capital stock of this corporation, at par.

\$10,411,000, in bonds of the capital stock of this corporation, at par, and

\$43,755,130, in Convertible Debenture Bonds of the capital stock of this corporation, at par.

The Secretary being directed by the President to read the communication, did so.

After a full discussion of the offer contained in said communication, and of the value of the shares of stock in the various corporations offered by Mr. Hanford, it was, upon motion duly made and seconded and carried by the unanimous vote of all the

Directors present, excepting Mr. Hanford who did not vote.

RESOLVED that the stocks offered by Mr. R. G. Hanford in his communication, a copy whereof is hereinafter spread upon these minutes, are of a value of not less than \$145,346.730;

FURTHER RESOLVED, that the said offer be, and the same is, hereby accepted, and that the proper officers of this Company be, and they are, hereby authorized and directed to issue such shares of stock, bonds, and convertible debenture bonds of this Company, and to do all such other acts and things, as may be necessary to effect the said exchange;

FURTHER RESOLVED, that a copy of said communication of R. G. Hanford be spread upon the minutes of this meeting.

The said communication is in words and figures following: [62]

“San Francisco, Cal.,
February 24th, 1911.

The United Properties Company of California,
San Francisco, California.

Gentlemen:

I am able to transfer and deliver to you more than 75% of the subscribed capital stock of the following named corporations, to-wit:

East Shore and Suburban Railway Company
The Union Water Company of California
United Light and Power Company
Sierra Water Supply Company
The Sacramento Short Line
The San Jose Short Line

The Pacific Terminal Company
Santa Clara Land and Water Company, and
Consolidated California Land Company;
and over 73% of

The Bay Cities Water Company.

That is to say, the capital stock of each of these companies, authorized and outstanding, and the number of shares which I am able to deliver to you are as follows:

**EAST SHORE AND SUBURBAN RAILWAY
COMPANY:**

Authorized capital stock, \$1,000,000.

10,000 shares, par value \$100 each.

Of this stock there has been issued and is now outstanding

\$336,000 par value.

and I am able to deliver the same to you.

**THE UNION WATER COMPANY OF CALI-
FORNIA:**

Authorized capital stock, \$5,000,000.

500,000 shares, par value \$10 each.

Divided into 300,000 shares common.

200,000 shares preferred.

All of this stock has been issued and is now outstanding, and I am able to deliver the same to you.

UNITED LIGHT AND POWER COMPANY:

Authorized capital stock, \$6,000,000.

600,000 shares, par value \$10 each.

Divided into 400,000 shares common.

200,000 shares preferred.

Of this stock there has been issued and is now outstanding.

\$3,982,130 par value common

\$1,996,100 par value preferred;

and I am able to deliver the same to you.

SIERRA WATER SUPPLY COMPANY:

Authorized capital stock, \$5,000,000.

50,000 shares, par value \$100 each.

All of this stock has been issued and is now outstanding, and I am able to deliver the same to you.

THE BAY CITIES WATER COMPANY:

Authorized capital stock, \$10,000,000.

100,000 shares, par value \$100 each.

All of this stock has been issued and is now outstanding, of which I am able to deliver \$7,390,414 par value to you. [63]

THE SACRAMENTO SHORT LINE:

Authorized capital stock, \$10,000,000.

1,000,000 shares, par value \$10 each.

Divided into 600,000 shares common

400,000 shares preferred.

All of this stock has been issued and is now outstanding, and I am able to deliver the same to you.

THE SAN JOSE SHORT LINE:

Authorized capital stock, \$8,000,000.

800,000 shares, par value \$10 each.

Divided into 400,000 shares common

400,000 shares preferred.

All of this stock has been issued and is now outstanding, and I am able to deliver the same to you.

PACIFIC TERMINAL COMPANY:

Authorized capital stock, \$5,000,000.

50,000 shares, par value \$100 each.

Divided into 25,000 shares common
25,000 shares preferred.

All of this stock has been issued and is now outstanding, and I am able to deliver the same to you.
SANTA CLARA LAND AND WATER COMPANY:

Authorized capital stock, \$10,000,000.
1,000,000 shares, par value \$10 each.

All of this stock has been issued and is now outstanding, and I am able to deliver the same to you.
CONSOLIDATED CALIFORNIA LAND COMPANY:

Authorized capital stock, \$10,000,000.
1,000,000 shares, par value \$10 each.

All of this stock has been issued and is now outstanding, and I am able to deliver the same to you.

For the consideration hereinafter named, I hereby offer to transfer and deliver to you certificates, duly issued and endorsed for all of the said shares of stock so controlled by me, that is to say: Shares of the following named corporations and having the following par value, respectively:

East Shore and Suburban Railway Co.	\$	333,000
The Union Water Company of Cal.		
	\$3,200,000 common	
	2,000,000 prefd.	5,000,000
United Light and Power Co.		
	3,982,130 common	
	1,996,100 prefd.	5,978,250
Sierra Water Supply Company		5,000,000
The Bay Cities Water Company		7,390,414

The Sacramento Short Line		
	\$6,000,000 common	
	4,000,000 preferred	10,000,000
The San Jose Short Line		
	4,000,000 common	
	4,000,000 preferred	8,000,000
The Pacific Terminal Co.		
	2,500,000 common	
	2,500,000 preferred	5,000,000
Santa Clara Land and Water Co.		10,000,000
Consolidated California Land Co.		10,000,000
		<hr/>
	Total,	\$66,706,644

[64]

For and in exchange for all of said stock, and as the consideration for the delivery thereof to you, I hereby offer to accept from you the following amounts of the common and preferred shares of the capital stock of your company, The United Properties Company of California, and the following amounts of your First Mortgage Bonds and Convertible Debenture Bonds, all of which must be delivered to me as fully paid, to wit:

FIRST: 575,792 shares of the fully paid common stock of your company having a par value of.....\$ 57,579,200

SECOND: 336,014 shares of the fully paid preferred stock of your company having a par value of..... 33,601,400

THIRD: 10,411 of the fully paid first mortgage bonds of your company having a par value of..... 10,411,000

FOURTH: 43,755.15 of the fully paid
 Convertible Debenture Bonds of
 your company having a par value
 of 43,755,130

Total.....\$145,346,730

As a further consideration for this exchange, I must require you to enter into an agreement with me whereby you shall undertake at any time on or before July 1, 1911, to exchange with any of the stockholders of The Bay Cities Water Company, whose stock shall not be transferred and delivered to you by me, the following amount of your shares of stock for shares of stock of The Bay Cities Water Company owned by them, respectively, that is to say:

For each \$10 par value of the shares of the common stock of The Bay Cities Water Company received by you, you shall issue in exchange therefor, \$3 par value of your common stock.

\$1 par value of your preferred stock; and

\$1 par value of your convertible debenture bonds.

If this offer is accepted by you, the exchange of stock herein contemplated shall be made and consummated within thirty days from the date of such acceptance. If your company is unable, within said time, to issue and deliver to me the permanent First Mortgage Bonds or Convertible Debenture Bonds of your company, hereinabove mentioned, I agree to accept from you, in lieu thereof, certificates for such bonds authorized and issued by you, which certificates shall provide that the holders thereof shall be entitled to receive from you the said First Mortgage

Bonds and Convertible Debentures Bonds as soon as the same are executed, issued and ready for delivery, together with all interest coupons attached to said First Mortgage Bonds entitling the holder thereof to interest at the rate of five per cent per annum from and after the 1st day of January, 1911.

Yours truly,

(Signed) R. G. HANFORD.

The President thereupon laid before the Board a communication from Mr. R. G. Hanford, wherein he offered to transfer to this corporation certain shares of the capital stock of the following corporations, to wit:

Oakland Traction Company, and San Francisco, Oakland and San Jose Consolidated Railway [65] at and for the price of \$12,413,076, being the shares of stock described in said communication as "now deliverable" stock, payable as follows, to wit:

\$5,358,037, in common shares of the capital stock of this corporation, at par;

4,696,460, in preferred shares of the capital stock of this corporation, at par; and

2,358,579, in Convertible Debenture Bonds of the capital stock of this corporation, at par.

PROVIDED, HOWEVER, that his offer was made upon the condition that this corporation should also agree and undertake with him to make a similar exchange, share for share, at any time on or before February 16, 1912, with the owners of certain other shares of stock of said two corporations, now in pledge, and, also, on or before July 1, 1911, with the owners of any or all other shares of stock in said

corporations willing to so exchange their said shares upon the said basis.

The Secretary being directed by the President to read the communication, did so.

After a full discussion of the offer contained in said communication, and of the value of the shares of stock in the two corporations, above referred to, offered by Mr. Hanford, it was, upon motion duly made and seconded and carried by the unanimous vote of all the Directors present, excepting only Mr. Hanford himself who did not vote.

RESOLVED, that the shares of stock now offered to this corporation by Mr. R. G. Hanford, under the designation "Now Deliverable" stock, in his communication, a copy whereof is hereinafter spread upon these minutes, are of a value of not less than \$12,413,076, and that the shares of stock designated in said communication as "Pledged" Stock and "Outsiders'" Stock, are equivalent in value, share for share, with the shares therein designated as "Now Deliverable" stock, the value whereof is now deemed to be as above set forth; and

FURTHER RESOLVED, that the said offer be, and the same is, hereby accepted, and that the proper officers of this Company be, and they are, hereby authorized and directed to issue such shares of stock, bonds, and convertible debenture bonds of this company, and to do all such other acts and things, as may be necessary to effect the said exchange;

FURTHER RESOLVED, that a copy of said communication of said R. C. Hanford be spread upon the minutes of this meeting.

The said communication is in words and figures as follows :

San Francisco, Cal., February 24th, 1911.

The United Properties Company of California,
San Francisco, California.

Gentlemen :

The San Francisco, Oakland and San Jose Consolidated Railway is a corporation organized and existing under the laws of the State of California, having a capital stock of \$7,750,000, divided into 77,500 shares of the par value of \$100 each, of which 27,500 shares is common stock and 50,000 shares is preferred stock. All of these shares of [66] stock are fully paid and are now outstanding.

I control and can deliver to you at the present time certificates for 11,247½ shares of said common stock and 24,050 shares of said preferred stock (hereinafter referred to as Now Deliverable stock), and the owners of 14,831 other shares of said common stock and 8,000 other shares of said preferred stock (hereinafter referred to as Pledged Stock) have agreed with me to exchange all of said shares of said stock for fully paid shares of the stock and fully paid Convertible Debenture Bonds of your Company, on the basis hereinafter specified, as soon as they may redeem them from a certain pledge, but in any event on or before the 18th day of February, 1912. Besides the shares of stock above mentioned there are outstanding and in the hands of other parties, \$142,150 par value of said common stock and \$1,795,000 par value of said preferred stock (herein-

after referred to as Outsiders' stock), of said Company.

The Oakland Traction Company is a corporation organized and existing under the laws of the State of California, having a capital stock of \$17,925,000, divided into 179,250 shares of the par value of \$100 each, of which 109,750 shares is common stock and 70,500 shares is preferred stock. All of these shares of stock are fully paid and are now outstanding.

I control and can deliver to you at the present time certificates for 33,933.3 shares of said common stock and 2,348.3 shares of said preferred stock (hereinafter referred to us as Now Deliverable stock), and the owners of 63,454 other shares of said common stock and 27,652 other shares of said preferred stock (hereinafter referred to as Pledged stock), have agreed with me to exchange all of said shares of said stock for fully paid shares of the stock and fully paid Convertible Debenture Bonds of your Company on the basis hereinafter specified, as soon as they may redeem them from a certain pledge, but in any event on or before February 18th, 1912. Besides the shares of stock above mentioned there are outstanding and in the hands of other parties, \$1,131,270 par value of said common stock, and \$3,349,970 par value of said preferred stock (hereinafter referred to us as Outsiders' stock) of said Company.

I hereby offer to transfer and deliver to you certificates duly issued and endorsed for said 11,247½ shares of Now Deliverable common stock and said 24,050 shares of Now Deliverable preferred stock of said San Francisco, Oakland and San Jose Consoli-

dated Railway; and said 33,983.3 shares of Now Deliverable common stock and said 9,348.3 shares of Now Deliverable preferred stock of said Oakland Traction Company, and all of my right, title and interest in and to said 14,831 shares of Pledged common stock and said 8,000 shares of Pledged preferred stock of said San Francisco, Oakland and San Jose Consolidated Railway, and all of my right, title and interest in and to said 63,454 shares of Pledged common stock and said 27,652 shares of Pledged preferred stock of said Oakland Traction Company, in consideration and in exchange for your Company issuing and delivering to me the following amounts of the common and preferred shares of the capital stock of your corporation, The United Properties Company of California, and the following amounts of your Convertible Debenture Bonds, all of which must be delivered to me as fully paid: [67]

FIRST:	535,803.7 shares of the fully paid common stock of your Company, having a par value of.....	\$ 5,358,037
SECOND:	469,646 shares of the fully paid preferred stock of your Company, having a par value of.....	4,696,460
THIRD:	2,358,579 of the fully paid Convertible Debenture Bonds of your Company, having a par value of	2,358,579

Total.....\$12,413,076

And for the further consideration of your agreeing and undertaking with me to, at any time on or

before February 18, 1912, exchange with the owners of said 14,831 shares of Pledged common stock and said 8,000 shares of Pledged preferred stock of said San Francisco, Oakland and San Jose Consolidated Railway, and with the owners of said 63,454 shares of Pledged common stock and said 27,652 shares of pledged preferred stock of said Oakland Traction Company whose shares of stock are now in pledge and who have agreed to exchange said shares of stock on or before said date, and also to exchange with any and all of the owners of the Outsiders' stock of said companies, or either of them, on or before July 1st, 1911, the *the* following amount of your fully paid shares of common and preferred stock and Convertible Debenture Bonds for the shares of stock of said companies owned by them respectively, or any part thereof, that is to say:

For each \$100 par value of the shares of the common stock of said San Francisco, Oakland and San Jose Consolidated Railway delivered to you, you shall deliver in exchange therefor \$100 par value of the fully paid shares of the common stock of your Company, \$30 par value of the fully paid shares of the preferred stock of your Company, and \$30 par value of the fully paid Convertible Debenture Bonds of your Company, and for each \$100 par value of the shares of the preferred stock of said San Francisco, Oakland and San Jose Consolidated Railway delivered to you, you shall deliver in exchange therefor \$25 par value of the fully paid shares of the common stock of your Company, \$100 par value of the fully paid shares of the preferred stock of your

company, and \$30 par value of the fully paid Convertible Debenture Bonds of your Company; and

For each \$100 par value of the shares of the common stock of said Oakland Traction Company delivered to you, you shall deliver in exchange therefor \$100 par value of the fully paid shares of the common stock of your Company, \$30 par value of the fully paid shares of the preferred stock of your Company, and \$30 par value of the fully paid Convertible Debenture Bonds of your Company, and for each \$100 par value of the shares of the preferred stock of said Oakland Traction Company delivered to you, you shall deliver in exchange therefor \$25 par value of the fully paid shares of the common stock of your Company, \$100 par value of the fully paid shares of preferred stock of your Company, and \$30 par value of the fully paid Convertible Debenture Bonds of your Company.

In other words, if this proposition is accepted and the entire exchange shall be perfected, you will receive the following shares of stock of said companies, to wit: [68]

SAN FRANCISCO, OAKLAND & SAN JOSE
CONSOLIDATED RAILWAY:

Common Stock.

Now Deliverable stock, par value.	\$ 1,124,750
Pledged stock of be delivered on or before	
Feb. 18, 1912, par value.	1,483,100
Outsiders' stock, exchangeable on or before	
July 1, 1911, par value.	142,150
	<hr/>
Total.	\$ 2,750,000

Preferred Stock.

Now Deliverable stock, par value.....	\$ 2,405,000
Pledged stock to be delivered on or before Feb. 18, 1912, par value.....	800,000
Outsiders' stock exchangeable on or before July 1, 1911, par value.....	1,795,000
	<hr/>
Total.....	\$ 5,000,000

OAKLAND TRACTION COMPANY:

Common Stock.

Now Deliverable stock, par value.....	\$ 3,398,300
Pledged stock to be delivered on or before Feb. 18, 1912, par value.....	6,345,400
Outsiders' stock exchangeable on or before July 1, 1911, par value.....	1,131,270
	<hr/>
Total.....	10,875,000

Preferred Stock.

Now Deliverable stock, par value.....	\$ 934,830
Pledged stock to be delivered on or before Feb. 18, 1912, par value.....	2,765,200
Outsiders' stock exchangeable on or before July 1, 1911, par value.....	3,349,970
	<hr/>
Total.....	\$ 7,050,000

And you will issue in exchange therefor the following amounts in par value of the fully paid shares and bonds of your company, said

THE UNITED PROPERTIES COMPANY OF CALIFORNIA:

Common Stock.

For Now Deliverable common stock of both companies, par value.....	\$ 5,358,037
For Pledged common stock of both companies to be delivered on or before Feb. 18, 1912, par value.....	8,596,378
For Outsiders' common stock of both companies exchangeable on or before July 1, 1911, par value.....	2,683,085
	<hr/>
Total.....	\$16,637,500

Preferred Stock.

For Now Deliverable preferred stock of both companies, par value.....	\$ 4,696,460
For the Pledged preferred stock of both companies to be delivered on or before February 18, 1912, par value...	5,913,790
For Outsiders' preferred stock of both companies exchangeable on or before July 1, 1911, par value.....	5,527,250
	<hr/>
Total.....	\$16,137,500

[69]

CONVERTIBLE DEBENTURE BONDS.

For Now Deliverable common and preferred stock of both companies, par value	\$2,358,579
For the Pledged common and preferred stock of both companies to be deliv-	

ered on or before Feb. 18, 1912, par value	3,418,093
For Outsiders' common and preferred stock exchangeable on or before July 1, 1911, par value.....	1,925,828
	<hr/>
Total.....	\$7,702,500

If this proposition is accepted by you I will assign to you my contracts with the owners of the pledged stock of both companies hereinbefore mentioned, and all of my right, title and interest thereunder, and you shall agree to make the exchanges therein provided for and hereinabove mentioned, but under no circumstances will I be liable to you in any way for any failure on the part of said stockholders to exchange their stock pursuant to the terms of said agreement or otherwise, nor shall the exchange of the shares of stock and bonds proposed to be made at the present time be affected in any manner or way by any such failure.

I have no agreement with the owners of the shares of stock hereinabove designated as **outstanding and** in the hands of other parties, but you shall, nevertheless, agree with me to make the exchanges hereinabove provided for with them, or any of them willing so to do, on or before July 1, 1911.

Yours truly,

(Signed) R. G. HANFORD.

The Secretary announced to the Board that he had received, from the office of the attorney for the corporation, information to the effect that the Certificate of Incorporation of the Company had been

amended by the incorporations, and that the original Amended Certificate of Incorporation was filed in the office of the Secretary of States of the State of California, at 9 o'clock A. M., on the 24th day of February, 1911, and that a copy thereof, certified by the Secretary of State, was filed for record on the morning of the same day in the office of the Recorder of New Castle County, State of Delaware; that this action had been taken pursuant to the informal request and with the approval of all of the officers, directors and stockholders of the company, and reminded them that the principal object of the amendment was to omit from the charter all provision for convertible shares of stock, and hence to increase the number of common shares of stock; and laid before the Board a telegram announcing the filing of the Amended Certificate, as above stated; and also presented to the Board, for examination, a copy of the Amended Certificate of Incorporation, as filed and recorded.

It was called to the attention of the Board that under the laws of the State of Delaware the incorporators were granted power to amend the Certificate of Incorporation before the payment of any part of the capital of the company, and that such powers doubtless expired upon the payment of any part of such capital; and further attention was called to the fact that stock certificates had been made out as of earlier dates than the date of the amendment of the Certificate of Incorporation. In explanation of this, the [70] Secretary stated that while it was true that stock certificates had been

made out under dates prior to the date of the amendment of the Certificate of Incorporation, none of them had in fact been paid for, nor had any part of the consideration for same been paid, and that the certificates were so made out by inadvertence and in anticipation of certain transactions which were being negotiated, and which, if carried out, it would be desirable to consummate without delay.

Whereupon upon motion duly made, seconded and unanimously carried by the vote of all the Directors, present, the Directors representing all of the subscribed shares of the capital stock of the Company, except only the shares subscribed by the incorporators who had signed said Amended Certificate of Incorporation, of which said incorporators Mr. C. B. Zabriskie is also a Director; and it appearing that no part of the capital of said corporation had been paid, and that all of the declarations set forth in the certificate of the incorporators contained in the Amended Certificate of Incorporation were true, it was

RESOLVED that the Amendments, as the same appear from the said Amended Certificate of Incorporation be, and the same are hereby accepted, and that the said Amended Certificate of Incorporation, and the action of the incorporators in filing and recording the same be, and the same are hereby approved, ratified and confirmed.

The said Amended Certificate of Incorporation is in the words and figures following, to wit:

AMENDED CERTIFICATE OF INCORPORATION OF
THE UNITED PROPERTIES COMPANY OF
CALIFORNIA.

THIS IS TO CERTIFY, that we the undersigned do hereby associate ourselves to establish and enter into a company, under and by virtue of the provisions of an Act of the General Assembly of the State of Delaware, entitled "An Act Providing a General Corporation Law," and the several supplements thereto and acts amendatory thereof, and do severally agree to take the number of shares of capital stock set opposite our respective names; and we do hereby unite in the following Amended Articles of Incorporation; and we do hereby certify

FIRST: The name of the company is
THE UNITED PROPERTIES COMPANY OF
CALIFORNIA.

SECOND: The location of the principal office in this State is the City of Wilmington, County of New Castle. The name of its resident agent therein and in charge thereof, is DELAWARE TRUST COMPANY, residing at said City of Wilmington, County of New Castle.

THIRD: The objects for which this company is formed and the nature of the business proposed to be transacted by it are

(a) To construct, equip, improve, work, develop, manage or control public works, and conveniences of all kinds, including railways, operated by steam, electricity, or any other motive power, docks, har-

bors, piers, wharves, canals, reservoirs, embankments, improvements, sewage, drainage, sanitary, water, gas, electric light, power, heat, telephonic, telegraphic, and power supply works, also hotels, warehouses, markets and public buildings [71] tunnels bridges, viaducts, and all other works or conveniences of public use or utility; to acquire, construct, equip, manage, control and operate line or lines of Railroads built or to be built in the States of California, or in any other state in the United States, with the right to construct branches or extensions into or through said State of California and into other states and territories, when and as the growth of the business of said company and the communities in the vicinity of said railroad, or railroads, shall require.

(b) To establish, promote and carry on the business of transportation in all its branches of passengers and of freight, by means of said railroad or railroads, and to engage in the business of a common carrier in all its branches.

(c) To apply for, purchase, or otherwise acquire, any contracts and concessions, for or in relation to the construction, execution, carrying out, equipment, improvement, management, administration, or control of public works, and conveniences, and to undertake, execute, carry out, dispose of, or otherwise turn to account the same.

(d) To purchase or otherwise acquire, issue, re-issue, sell, pledge and deal in shares of stock of other corporations, stocks, bonds and bonds of other corporations, debentures, and securities of all kinds, and

to make and execute contracts of guaranty or security for the payment of the dividends or interest due thereon, or otherwise, in relation thereto.

(e) To take, acquire, buy, hold, own, sell, lease, mortgage, improve, cultivate, and otherwise deal in and dispose of real estate; to take acquire, buy, hold, own, hire, lease, mortgage, pledge and otherwise deal in and dispose of all kinds of personal property, chattels, and chattels real, choses in action, gold, silver and other ores; to purchase, take, acquire, buy, hold, own sell, lease, mortgage and otherwise deal in and dispose of all kinds of mines, minerals and mineral rights; to take, acquire, appropriate, purchase, sell, store, supply and furnish water for irrigation, manufacturing, mining and domestic uses, and for any other purpose to which water can be applied as a use; to construct and maintain reservoirs, dams, canals, ditches, flumes, and pipe-lines, and all other works necessary or convenient for the catchment, diversion, storage, distribution or use of water; and to take, acquire, buy, hold, own, sell, lease, mortgage and otherwise deal in and dispose of the same, and rights to water and riparian rights; to purchase, operate, construct, sell, lease, mortgage, and otherwise dispose of viaducts, ferries, wharves, chutes, piers, canals and ditches for draining, agriculture, mining and navigation and other purposes; to construct and erect buildings, to take, acquire, purchase, sell, lease, mortgage, construct, erect, hold, maintain and conduct hotels and lodging houses and all business incident thereto and connected therewith; to buy, sell, mortgage, construct, maintain and

charter vessels propelled by means of sails, steam, electricity or other motive power, and to navigate the same in all the navigable waters of the earth; to engage in, conduct and carry on manufacturing, stone quarrying, mining, mercantile, mechanical, and commercial business in all their branches; to issue debenture bonds and other evidences of indebtedness of whatever kind or nature, or bonds, whether secured or unsecured, by mortgage or mortgages, or trust deed or trust deeds, or otherwise, upon the property and franchises, or any part thereof, of the said Company, or otherwise, and to sell, pledge, or otherwise dispose of or use the same for the purpose of obtaining money with which to enlarge or carry on the [72] business and to accomplish the objects and purposes, or any of them, of this company; to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of shares of the capital stock of this or any other corporation or corporations, created under the laws of this or any other State or Country, and to exercise, while owner of such stocks, all the rights, powers and privileges, including the right to vote thereon, which natural persons being the owners of such stock, might, could, or would exercise; to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange or otherwise dispose of any securities or evidences of debt created by any other corporation of this or any other State or Country, in the same manner and to the same extent as natural persons being the owners thereof, might, could or would lawfully do; and in general to engage in any and all

lawful business whatever necessary or convenient in connection with the business of said company, with the right to construct, lease, maintain, and operate railroads under traffic or any other arrangement, and to own, operate and maintain ship lines, vessel lines or other lines for transportation, and to any and every act or acts, thing or things, incidental to, growing out of or connected with or incidental to said business or any part thereof.

(f) To subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise dispose of shares of capital stock, bonds, mortgages, debentures, notes and other securities, obligations, contracts and evidences of indebtedness of corporations of the States of Delaware and California, or of any other State, including corporations which own, operate or lease, or which are organized for the purpose of constructing, owning, operating or leasing street surface railroads, elevated railroads, rapid transit railroads, underground railroads, tunnels, bridges, tunnel railroads, railway terminals, or railroads of any character or description, in the States of Delaware and California, or any territory adjacent thereto, and corporations engaged in furnishing or organized to furnish electricity for any lawful purposes or power in any form, and corporations whose funds are or may be invested in the shares of stock, bonds or other securities of any corporations of the character hereinbefore described; to exercise in respect of any such shares of stock, bonds or other securities of corporations, any and all rights, powers and privileges of individual ownership, including the right to vote, to

issue bonds and other obligations, and to secure the same by pledging or mortgaging the whole or any part of the property of the company, and to sell or pledge such bonds and other obligations for proper corporate purposes, and to do any and all other lawful acts and things in connection therewith tending to increase the value of the property at any time held by the company.

(g) To apply for, patent, purchase, lease, or otherwise acquire, and to register, hold, own, and use, any and all trademarks, trade secrets, processes, formula, inventions and improvements, capable of being used in connection with the work of the company, whether secured under letters patent in the United States, or elsewhere, or otherwise, and to use, operate and manufacture under the same, and to sell, assign, grant licenses in respect of, or otherwise dispose of and turn the same to the account and profit of the company.

(h) To acquire the good will, rights and property, and to undertake the whole or any part of the assets and liabilities, or either thereof, of any person, firm, association or corporation, [73] and to pay for the same in cash, stock or bonds of this company, or otherwise.

(i) To enter into, make, perform and carry out contracts of every kind, for any lawful purpose, without limit as to amount, with any person, firm, association or corporation, and to draw, make, accept, endorse, guarantee, discount, execute and issue promissory notes, bills of exchange, warrants and other negotiable or transferable instruments; to pur-

chase, hold and issue the shares of its own capital stock.

(j) To have offices, conduct its business and promote its objects, within or without the State of Delaware, in other States, the District of Columbia, the Territories and colonial dependencies of the United States, and in foreign countries, without restriction as to place or account; and unlimitedly to hold, purchase, mortgage and convey real and personal property in the State of Delaware and as well in all other States and Territories or in foreign countries.

(k) To do any and all things set forth in this certificate as objects, purposes, powers or otherwise, to the same extent and as fully as natural persons might do, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and either alone or in company with others.

FOURTH: The total authorized capital stock of this Company is Two Hundred Million (200,000,000) Dollars, divided into Two Million (2,000,000) shares of the par value of One Hundred (100) Dollars each, and the said Two Million (2,000,000) shares are divided into the following two classes; (a) Preferred stock, and (b) Common stock.

The Preferred stock of said Company shall consist of Five Hundred Thousand (500,000) shares of One Hundred (100) Dollars each, and the Common stock of said Company shall consist of One Million five hundred thousand (1,500,000) shares of the par value of One Hundred (100) Dollars each.

A. The terms, conditions, limitations and provi-

sions upon which said Preferred stock is issued are as follows:—

1. The holders of Preferred stock shall be entitled to receive, when and as declared by the Board of Directors, from the surplus or net profits of the Company, and before any dividends are paid on the common stock of the company, fixed yearly dividends of six (6) per cent and in no event exceeding six (6) per cent, payable semi-annually, which shall be cumulative from and after the 1st day of January, 1916, but not before, and shall not otherwise participate in the profits of the Company.

2. All such dividends on Preferred Stock, and only such, as shall accrue from and after the 1st day of January, 1916, shall be cumulative, so that if for any period or periods beginning on or after said 1st day of January, 1916, the same be not paid, the right thereto shall accumulate as against the common stock, and all arrears of such cumulative dividends shall be paid before the payment of dividends can be commenced or resumed on the common stock.

3. The holders of preferred stock shall, in case of dissolution or liquidation of the company, be entitled to be paid in full, both the par amount of their shares and the accrued cumulative dividends unpaid thereon, before any amount shall be paid to the holders of common stock, and shall not thereafter participate in any of the property of the company or proceeds of liquidation. [74]

4. The holders of Preferred stock shall not be entitled to vote at any meeting of the stockholders,

and shall not be entitled to participate in the management of the Company.

B. The holders of Common stock shall have the right to vote at any and all meetings for the election of Directors, and at any and all meetings of stockholders concerning the management of the Company. This right shall be exercised solely and exclusively by the holders of the Common stock.

FIFTH: The amount of capital stock with which this company will commence business in the sum of Five Thousand (5,000) Dollars, being fifty (50) shares of Common stock of one hundred (100) dollars each, par value.

SIXTH: The names and places of residence of the subscribers and the number of shares subscribed for by each are as follows:

Name.	Place of Residence.	Number of Shares.
Christian B. Zabriskie,	New York City, N. Y.	44
H. Ralph Ewart,	Wilmington, Delaware	3
Harry W. Davis,	Wilmington, Delaware	3
		<hr/> 50

SEVENTH: The period of existence of this company is unlimited and perpetual.

EIGHTH: The private property of the Stockholders of this Company shall not be subject to the payment of its corporate debts.

NINTH: In furtherance, and not in limitation of the powers conferred by statute, the Board of Directors of this Company are expressly authorized:

To make, alter, amend and rescind the By-Laws of this company, to fix the amount to be reserved as working capital, to authorize and cause to be exe-

cutted mortgages and liens upon the real and personal property of this company, subject to the limitations above set forth.

From time to time to determine whether and to what extent, and at what time and places and under what conditions and regulations, the accounts and books of this company (Other than the stock ledger), or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right of inspecting any account or book or document of this company except as conferred by statute or authorized by the Board of Directors or by a resolution of the majority of the stockholders.

If the By-Laws so provide, to designate two or more of their number to constitute an *Execute* Committee, which Committee shall for the time being, as provided in said resolution or in the By-laws of this Company, have and exercise any and all of the powers of the Board of Directors in the management of the business and affairs of this Company, and have power to authorize the seal of this company to be affixed to all papers which may require it.

Both stockholders and Board of Directors shall have power, if the By-laws so provide, to hold their meetings either within or without the State of Delaware, to have one or more offices in addition to the principal office in Delaware, and to keep the books of this company (subject to the provisions of the statute) outside of the State of Delaware at such places as may be from time to time designated by them.

This Company may in its By-Laws confer powers

additional to [75] the foregoing upon the Board of Directors, in addition to the powers and authorities expressly conferred upon them by the statute.

The Board of Directors shall have power to determine the use and disposition to be made of any surplus or net profits over and above the capital stock paid in, and may, in their discretion, and before any dividends are declared or become payable on any of the classes of stock to be issued hereunder, use, apply and set apart such surplus or net profits, in an amount to be determined upon, from time to time, by the Board of Directors in their discretion, as a reserve fund to meet contingencies, or for equalizing dividends, or for additions and betterments, or for repairing or maintaining any property of the corporation, or for any such other purpose or purposes as the Board of Directors shall deem advisable or necessary to conserve the interests of the Company; and the Board may, in their discretion, use and apply such fund, or any part thereof, in purchasing or acquiring the bonds or other obligations or shares of capital stock of the corporation, to such extent and in such manner and upon such terms as the directors shall deem expedient; but shares of such capital stock so purchased or acquired may be resold unless such shares shall have been retired for the purpose of decreasing the corporation's capital stock as provided by law; and such reserve fund may in the discretion of the Board, be reserved and kept intact, or may be used and paid out, in their discretion, for any of the purposes aforesaid; but no stockholder shall ever acquire any

right to receive dividends out of such reserve fund, or the surplus or net profits set apart as aforesaid, except by resolution of the Board of Directors expressly adopted for that purpose, or upon the liquidation or insolvency of the Company.

In addition to the powers and authorities hereinbefore or by statute expressly conferred upon them, the Board of Directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by this Company; subject, nevertheless, to the provisions of the statutes of Delaware, of this amended certificate, and to any By-laws from time to time made by the stockholders; provided, however, that no By-Laws so made shall invalidate any prior act of the Board of Directors which would have been valid if such By-Laws had not been made.

This company reserves the right to amend, alter, change or repeal any provision contained in this amended Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

WE, THE UNDERSIGNED, being the incorporators of The United Properties Company of California, and the original subscribers of the capital stock hereinbefore named, for the purpose of forming a corporation to do business both within and without the State of Delaware, and in pursuance of an Act of the Legislature of the State of Delaware, entitled "An Act Providing a General Corporation Law," (approved March 10th, 1899), and the acts

amendatory thereof and supplemental thereto, and desiring to modify, change and alter its original certificate of incorporation, and no part of the capital of said corporation having been paid, do make and file this Amended Certificate, hereby declaring and certifying that no part of the capital of said Corporation has been paid, and that the facts herein stated are true, and do respectively agree to take the number of shares of stock herein [76] set forth, and accordingly have hereunto set our hands and seals, this 26th day of January, 1911.

CHRISTIAN B. ZABRISKIE. (Seal)

H. RALPH EWART. (Seal)

HARRY W. DAVIS. (Seal)

In the presence of

W. R. Alberger.

Clifford V. Mannering as to H. Ralph Ewart and Harry W. Davis.

State of California,

City and County of San Francisco,—ss.

BE IT REMEMBERED that on this 18th day of February, A. D. 1911, personally came before me, D. B. Richards, a Notary Public in and for the City and County of San Francisco, State of California, Christian B. Zabriskie, one of the parties to the foregoing Amended Certificate of Incorporation, known to me personally to be such, and acknowledged the said amended certificate to be his act and deed, and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

D. B. RICHARDS,
Notary Public, in and for the City and County of
San Francisco, State of California.

D. B. RICHARDS,
Notary Public, City and County of San Fran-
cisco.

Co. Clerk General Dept. F. No. 15.

State of California,
City and County of San Francisco,—ss.

I, H. I. MULCREVY, County Clerk of the City and County of San Francisco, and ex-officio Clerk of the Superior Court thereof, the same being a Court of Record, having by law a seal, do HEREBY CERTIFY, that D. B. RICHARDS, whose name is subscribed to the Certificate of the proof of acknowledgment of the annexed instrument and thereon written, was, at the time of taking such proof and acknowledgment, a Notary Public, in and for said City and County, residing therein, duly commissioned and sworn, and duly authorized by the laws of said State to take the acknowledgments and proofs of deeds or conveyance, for land, tenements or hereditaments in said State, to be recorded therein. And further that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said Certificate of proof or [77] acknowledgment is genuine, and that said instrument is executed and acknowledged according to the laws of said State.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, the 18th day of February, 1911.

H. I. MULCREVY,
Clerk.

Superior Court City and County of San Francisco,
Cal.

State of Delaware,
County of New Castle,—ss.

BE IT REMEMBERED that on this twenty-third day of February, A. D. 1911, personally came before me, CLIFFORD V. MANNERING, a Notary Public for the State of Delaware, H. Ralph Ewart and Harry W. Davis, two of the parties to the foregoing Amended Certificate of Incorporation, known to me personally to be such, and severally acknowledged the said amended certificate to be the act and deed of the signers respectively, and that the facts therein stated are truly set forth.

GIVEN under my hand and seal of office the day and year aforesaid.

CLIFFORD V. MANNERING,
Notary Public.

(Clifford V. Mannering, Notary Public, State of Delaware. Appointed Sept. 30, 1909. Term 4 years.)

STATE OF DELAWARE.

OFFICE OF SECRETARY OF STATE.

I, WILLIAM T. SMITHERS, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct

copy of the Amended Certificate of Incorporation of "THE UNITED PROPERTIES COMPANY OF CALIFORNIA," as received and filed in this office the twenty-fourth day of February, A. D. 1911, at 9 o'clock A. M.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, at Dover, this twenty-fourth day of February, in the year of our Lord one thousand nine hundred and eleven.

[Seal] WILLIAM T. SMITHERS,
Secretary of State.

Upon motion duly made and seconded, the meeting adjourned to meet on Saturday, February 25th, 1911, at 2:30 o'clock P. M.

(Seal) F. W. FROST,
Secretary." [78]

Mr. ERSKINE.—Q. Now, Mr. Tevis, did Mr. Hanford deliver to the United Properties Company within 30 days from February 24, 1911, the certificates of stock which he agrees to deliver in offer No. 1?

A. I believe that he did; I cannot say positively he did so within 30 days, but my impression is that he did; that is my best recollection.

Q. Were the certificates for bonds which were issued to him for the shares of stock which he delivered, issued to him before or after he delivered the shares of stock to it?

A. I cannot answer that question. It seems to me that the certificate book would be the best evidence of that. My impression is that the certificates were delivered after he delivered the stocks and bonds.

Q. Now, I call your attention to the fact that the original certificates were dated February 16, 1911, while this meeting was held on February 24, 1911. Now, isn't it a fact, Mr. Tevis, that while they were filled out and prepared on February 16, 1911, they were not delivered to him until after he made the delivery of stocks?

A. I believe that is correct. I would like to alter my testimony in one particular, with reference to the delivery of the stocks and bonds, that he was supposed to have made; there were certain stocks, preferred and common shares of stocks in the Traction Company that he agreed to deliver.

Q. Let me interrupt you for a moment. You are referring now to offer No. 2. I am only asking you about offer No. 1. A. Probably that is so. [79]

The WITNESS (Continuing).—The United Properties Company received and kept the shares of stock which Mr. Hanford delivered to it and I believe they still have them. The certificate book of the United Properties Company, which I have, is the first book kept by it. Certificates Nos. 45, 46, 47 and 48, shown me, I should say were certificates which were part of the certificates issued to Mr. Hanford in return for those stocks, and they were included in the 10,411 certificates for \$1,000 a piece that were issued to him; that is my impression. I believe that number was issued to him.

The COURT.—Q. When you say that number, you are speaking now of the four you have just shown him, or of the 10,411?

Mr. ERSKINE.—The 10,411 for \$1,000 each; that would make \$10,411,000.

Mr. HENSHALL.—Will you direct Mr. Tevis' attention to the fact that you are dealing exclusively with offer No. 1?

Mr. ERSKINE.—Yes, I have not referred to offer No. 2 at all.

The WITNESS.—(Continuing.)

Interest was paid upon the certificates by the United Properties Company and the directors knew that the Company was paying that interest. When any certificates of the original issue were surrendered and new ones issued interest was paid on the new issue and the interest was paid to and including January, 1913. The books from which these certificates were issued and to which they were returned when they were surrendered were kept in the office of the Company, and [80] the directors knew they were kept there. I never heard of any resolution adopted by the directors of the United Properties Company disaffirming or disapproving of the issuance or reissuance of any of these certificates. I was a stockholder in the Company. I can identify one of the triplicate originals of the minutes of the stockholders meeting of the United Properties Company, and this book is a triplicate original of the minutes of the stockholders meeting of the Company.

Mr. ERSKINE.—Now, I offer in evidence the minutes of the stockholders meeting of The United Properties Company of California of December 5, 1911, and ask that they be considered as read.

Mr. HENSHALL.—I will admit that is a correct

stockholders meeting, subject to my previous objection that it is immaterial, irrelevant and incompetent.

The COURT.—I will take it subject to the objection.

The minutes of the stockholders meeting of The United Properties Company of California of December 5, 1911, were then read in evidence, and were and are in the words and figures, as follows: [81]

Minutes of the Stockholders' Meeting of the United Properties Co. of California of December 5, 1911.

“ADJOURNED ANNUAL MEETING OF STOCKHOLDERS OF THE UNITED PROPERTIES COMPANY OF CALIFORNIA.

San Francisco, California,

Tuesday, December 5th, 1911.

The adjourned Annual Meeting of the Stockholders of THE UNITED PROPERTIES COMPANY OF CALIFORNIA was held at the office of the Company, the same being located at room number 501, on the fifth floor of the building known as number 57 Post Street, in the City and County of San Francisco, State of California, on the fifth day of December, A. D. 1911, at the hour of two o'clock in the afternoon.

Mr. F. M. Smith called the meeting to order and, upon motion duly made and seconded, was elected Chairman.

Mr. F. W. Frost was appointed Secretary of the meeting.

The common stockholders' ledger of the Company, together with an alphabetical list of the common stockholders, was presented for the inspection of anyone entitled to see them.

The following stockholders were present in person at said meeting, holding the number of shares of the Common Capital Stock of said corporation herein set opposite their respective names to wit:

F. M. Smith,	29,824.50 shares
William S. Tevis	47,597.50 shares
The Realty Syndicate, represented by F. M. Smith, its President,	77,075.50 shares
Gavin McNab,	10. shares
Dennis Searles,	1,038. shares
W. R. Alberger,	10. shares
C. R. Alberger,	3. shares
F. W. Frost,	7. shares

Total number of shares 155,565.50

There were present at said meeting, by proxy, the following named stockholders of the corporation holding the number of shares of the common capital stock of said corporation herein set opposite their respective names, represented by Mr. William S. Tevis, who held the proxies in writing of said stockholders, to wit:

NAMES.	SHARES.
Atwell, J. M.	15.
Abrams, G. D.	12.50
Brooks, A. B.	60.
Beal, C. N.	13,202.70
Bissell, W. A.	262.50
Beal, E. M.	25.
Beal, Ray C.	25.
Beal, Clyde N.	25.
Bell, Traylor W.	387.
Bell, Harmon	1,814.
Barnard, W. C.	2.50
Bowes, John E.	3.125
Cartwright, F. W.	1,207.90
Davis, Harry W.	13.
De Remer, J. G.	.50
[82]	
Dodge, G. M.	87.50
Dixon, Rose K.	175.
Dunne, Maud	52.50
Edwards, L. C.	3.75
Flint, Emma F.	36.
Fletcher, H. K.	15.
Fisher, James	330.325
Green, W. F.	60.
Granger, J. T.	350.
Gumpel, Max	70.
Guittard, Frank	23.30
Getliffe, Fred	2.
Gereneaux, Pauline K.	13.125
Greenbaum, Will L.	6.50
Hanford, R. G.	314,035.

NAMES.	SHARES.
Harper, H. T.	60.
Hanford, R. G. Tr.	168,593.85
Hanford Investment,	4,542.41
Kennedy, Robt. A.	15.
Miller, W. S.	936.
Meyberg, L. J.	33.25
Moore, Pierre C.	50.
Martel, C.	300.
Meredith, Wynn	5.
McLaughlin, H. A.	57.
Newmark, Leo	26.25
O'Connell, M., Trustee	929.60
O'Connell, M.	50.50
Rheem, W. S.	1,188.
Robertson, C. H.	30.
Scofield, D. C.	1,071.
Scofield, Earle L.	9.
Scofield, S. L.	18.
Smith, J. P.	15.
Sullivan, M. J.	20.05
Smith, Evelyn Ellis	20,010.
Tevis, Wm. S., Tr.	4.242
Versalovich, V. P.	58.375
Versalovich, V. P., Tr.	21.
Worden, Clinton E.	4,021.75
Wheeler, E. G.	9,407.75
Wilson, M. S.	801.95
Woodward, C. W.	5.
Wilson, Fannie	17.50
Wells Fargo Nevada National Bank Pledgee	1,500.

NAMES.	SHARES.
Western Metropolis National Bank, of San Francisco, Pledgee,	480.
Warren, Chas. A.	220.
Zabriskie, C. B.	47.
Zeiss, Walter	30.
	<hr/>
Total number of shares	546,890.202
Total number of shares present,—	702,455.702
Total number of shares absent,—	4,925.240
	<hr/>
Total number of shares issued,—	707,380.942

[83]

Thereupon, the Chairman submitted the question of the validity of said proxies to the meeting and the same was duly declared and found to be sufficient in all respects to confer the requisite authority upon the holder thereof.

The proxies presented were ordered to be filed with the Secretary of the meeting.

The Secretary presented and read a copy of the notice calling the Annual Meeting and the same was ordered filed with the Secretary of the meeting.

The Chairman then stated that as said notice of meeting had been properly given, and as more than a majority of the Common Capital Stock was represented, the meeting was competent to proceed with the transaction of business.

Upon motion duly made, seconded and unani-
mously carried, the reading of the minutes of the
last meeting of the Stockholders was waived.

Upon motion duly made, seconded and unani-

mously carried, the meeting proceeded to the election of a Board of eight Directors to hold office for the ensuing year and until others are elected and qualified in their stead.

Messrs. W. R. Alberger and Dennis Searles were appointed Inspectors of Election and the oath was duly administered to them.

Said oath is as follows:

! :

INSPECTORS' OATH.

State of California,
County of San Francisco,—ss.

W. R. ALBERGER and DENNIS SEARLES being sworn upon their respective oaths do severally promise and swear that they will faithfully, honestly and impartially perform the duties of inspector of election, and will to the best of their skill and ability conduct the election to be held this day for directors of the above-named corporation and a true report make of the same.

(Signed)

W. R. ALBERGER,

(Seal)

DENNIS SEARLES.

Subscribed and sworn to before me this 5th day of December, 1911.

(Signed)

MARY L. THOMAS,

Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires June 20, 1915.

The polls were thereupon opened and remained open one-quarter of an hour.

The stockholders prepared their ballots and delivered them to the Inspectors.

The polls thereupon being closed, the Inspectors presented their report showing that the following persons, stockholders of the corporation, had received 702,455,702 votes, representing 702,455,702 shares:— [84]

Name.	Number of Votes.
F. M. Smith	702,455,702
William S. Tevis	702,455,702
R. G. Hanford	702,455,702
Gavin McNab	702,455,702
C. B. Zabriskie	702,455,702
W. R. Alberger	702,455,702
Dennis Searles	702,455,702
H. W. Davis	702,455,702

Said Inspectors' Certificate is as follows

INSPECTORS' CERTIFICATE.

WE, THE INSPECTORS OF ELECTION, appointed to act at the meeting of the stockholders of the above-named corporation held this fifth day of December, 1911, do report that, having taken an oath impartially to conduct the election, we did receive the votes of the stockholders by ballot.

We report that the votes were cast, and that the following persons received the number of votes set opposite their respective names, to wit:

For Directors.	Number of Votes.
F. M. Smith	702,455,702
William S. Tevis	702,455,702
R. G. Hanford	702,455,702
Gavin McNab	702,455,702
C. B. Zabriskie	702,455,702
W. R. Alberger	702,455,702

For Directors.	Number of Votes.
Dennis Searles	702,455,702
H. W. Davis	702,455,702

All of which is respectfully submitted this fifth day of December, A. D. 1911, at San Francisco, California.

(Signed) W. R. ALBERGER,
DENNIS SEARLES,
Inspectors.

The Chairman thereupon declared the above-named persons elected Directors of the Company, to hold office until the next annual election and until their successors are elected and qualified.

Upon motion duly made, seconded and unanimously carried, said Stockholders then adopted the following resolution:

RESOLVED, That all the acts, contracts and proceedings of the officers, directors and committees of this corporation since the first meeting of the Incorporators of this corporation, which meeting was held in the City of Wilmington, State of Delaware, on the thirty-first day of December, 1910, to this date, be and they are, hereby in all respects ratified, confirmed and approved and declared to be the acts and deeds of this corporation.

There being no further business before the meeting it was, upon motion duly made and seconded, declared adjourned.

(Seal)

F. M. SMITH,
Chairman of Meeting.

F. W. FROST,
Secretary of Meeting." [85]

The WITNESS.—(Continuing.) I believe I was present at the meeting at which the resolution was passed and which has just been read. I have held proxies for 546,890 shares, out of the 700,000 that were present; that is, if the resolution so states, I undoubtedly did so, because I know it is correct. At the time the resolution was passed, December 5, 1911, I knew and to the best of my knowledge all the other persons knew that these certificates had been issued.

Mr. ERSKINE.—There has been an admission of facts filed in this case and in the case of *Kibbe vs. United Properties Company*, and there is a stipulation on file in the other two cases, adopting this admission of facts as an admission of facts in those actions. Now, I will offer the admissions of facts in evidence as part of my case. I also offer in evidence the stipulation on file in the two *Burkhardt* cases adopting this admission of facts as an admission of facts in those two cases.

The admission of facts and stipulations, referred to, were then read in evidence, and were and are in the words and figures following, to wit: [86]
(Title of Court and Cause.)

“ADMISSION OF CERTAIN FACTS.

Whereas the above-entitled action is at issue and ready for trial,

Now, therefore, the following facts and matters are admitted:

On the 31st day of December, 1910, the articles of incorporation of the defendant were filed in the office of the secretary of state of the State of Delaware

and a certificate of incorporation was thereupon issued.

The names of the Incorporators are:

Christian B. Zabriskie,

Ralph Ewart,

Harry W. Davis.

Thereafter the first meeting of the corporation was held on the 31st day of December, 1910, at the office of the Delaware Trust Company in the City of Wilmington, State of Delaware:

C. B. Zabriskie owning 44 shares of the common capital stock of the defendant;

Ralph Ewart owning 3 shares of the common capital stock of the defendant, and

Harry W. Davis owning 3 shares of the common capital stock of the defendant.

The incorporators of the said defendant were present. The By-laws were duly and properly adopted at the said meeting. A copy of the provisions of these by-laws which deal with:

1. The election of directors,
2. The powers of the board of directors,
3. The creation and powers of an executive committee of the board of directors,
4. The powers of the president of the corporation and chairman of the executive committee during the intervals between the meetings of the latter,
5. The powers of the vice-president, secretary, assistant secretaries and treasurer,
6. The time, place and manner of the holding of stockholders' meetings, and

7. The filling of vacancies caused by the absence of directors, [87] are set forth in "Exhibit A" which is hereto annexed, hereby referred to and made a part hereof for all purposes.

Thereafter at the said meeting subscriptions for common capital stock of the said defendant were read. The names of the subscribers with the amounts subscribed by each, respectively set after their names, are as follows:

F. M. Smith, 10 shares,
W. S. Tevis, 10 shares,
R. G. Hanford, 10 shares,
Gavin McNab, 10 shares,
C. B. Zabriskie, 10 shares,
W. R. Alberger, 10 shares, and
Dennis Searles, 10 shares.

Thereupon an election of directors was held and the following persons were elected directors of the corporation to serve until the annual meeting of stockholders on the 25th day of October, 1911. The said directors so elected were:

F. M. Smith,
W. S. Tevis,
R. G. Hanford,
Gavin McNab,
C. B. Zabriskie,
W. R. Alberger,
Dennis Searles, and
Harry W. Davis.

The Board of Directors was then duly and properly authorized to issue the capital stock of the de-

fendant company in such amounts and proportions as from time to time they should determine in full or partial payment for cash, property, contracts, rights, services and labor.

Thereafter the meeting adjourned.

By the articles of incorporation the corporation is given the power to purchase and acquire the capital stock of other corporations. This is designated in the articles as one of the purposes of incorporation.

The capital stock of the defendant consists of 2,000,000 shares [88] of the par value of \$100.00 a share divided into the following classes:

1. Preferred 500,000 shares
2. Convertible 750,000 shares
3. Common 750,000 shares

The articles provide that the holders of preferred and convertible stock shall not be entitled to a vote and shall not be entitled to participate in the affairs of the corporation; that the right to vote at any meeting of the stockholders shall be exercised solely and exclusively by the majority holders of the common stock.

On January 13th, 1911, in San Francisco, California, the first meeting of directors was held. The following officers were elected:

- F. M. Smith, President,
- W. S. Tevis, First Vice-president,
- W. R. Alberger, Second Vice-president,
- C. B. Zabriskie, Treasurer,
- Gavin McNab, Chief Counsel.

The following executive committee was appointed:

F. M. Smith,
Gavin McNab,
C. B. Zabriskie.

The meeting was then adjourned until February 24th, 1911. On February 24th, 1911, the adjourned meeting was held. All of the directors were present with the exception of Harry W. Davis.

On February 16th, 1911, certificate No. 45, similar in form, tenor, covenants and provisions to said Exhibit A of complaint, but calling for five hundred bonds of the par value of Five Hundred Thousand (\$500,000.00) Dollars, was subscribed by W. R. Alberger, vice-president, and by C. B. Zabriskie, Treasurer, the seal of the corporation was affixed and the name of R. G. Hanford was written into said certificate in the place where the names of Ira M. Condit and Mary Ellen Kibby appear on said Exhibit A. This [89] certificate was delivered to said R. G. Hanford subsequent to February 24th, 1911.

On February 16th, 1911, certificate No. 47, similar in form, tenor, covenants and provisions to said Exhibit A, but calling for two hundred (200) bonds of the par value of Two Hundred Thousand (\$200,000) Dollars, was subscribed by W. R. Alberger, vice-president and by C. B. Zabriskie, treasurer, the seal of the corporation was affixed, the name of R. G. Hanford was written into said certificate in the place where the names of Ira M. Condit and Mary Ellen Kibby appear on the said Exhibit A. This certificate was delivered to said R. G. Hanford subsequent to February 24th, 1911.

On the 16th day of February, 1911, certificate No. 48, similar in form, tenor, covenants and provisions to said Exhibit A, but calling for two hundred (200) bonds of the par value of two hundred thousand (\$200,000) Dollars, was subscribed by W. R. Alberger, vice-president and by C. B. Zabriskie, treasurer, the seal of the corporation was affixed and the name of R. G. Hanford was written into said certificate in the place where the names of Ira M. Condit and Mary Ellen Kibby appear on the said Exhibit A. This certificate was delivered to said R. G. Hanford subsequent to February 24th, 1911.

That on or about March 11th, 1911, certificate Number forty-five (45) was surrendered by the said R. G. Hanford to the United Properties Company and in lieu of part thereof certificates numbered 73 for ten bonds, 74 for ten bonds, 75 for ten bonds, 78 for five bonds and 79 for five bonds, were signed by the officers of the corporation who signed certificate No. 45 or by officers duly appointed in the place thereof and the seal of the corporation was affixed to each of the said certificates [90] numbered 73, 74, 75, 78 and 79; and each of them was issued to R. G. Hanford by the officers signing the same; each of said last-mentioned certificates was similar in form, tenor, provisions and covenants to Certificate No. 45.

That on or about June 27th, 1911, certificate No. 47 was surrendered by R. G. Hanford to the United Properties Company and in lieu thereof certificates numbered 497 for 100 bonds, and 498 for 100 bonds were signed by the officers of the corporation who

signed certificate No. 47 or officers duly appointed in the place thereof and the seal of the corporation was affixed to each of the said certificates numbered 497 and 498 and each of them was issued by said officers to said Hanford Investment Company; each of said last-mentioned certificates was similar in form, tenor, provisions and covenants to Certificate No. 47.

That on or about March 11th, 1911, Certificate No. 48 was surrendered by the said R. G. Hanford to the United Properties Company and in lieu of part thereof certificates numbered 86 for 5 bonds, 96 for 10 bonds, 98 for 10 bonds and 99 for 10 bonds were signed by the officers of the corporation, who signed certificate No. 48, or by officers duly appointed in the place thereof and the seal of the corporation was affixed to each of the said certificates numbered 86, 96, 98 and 99; and each of them was issued by said officers to said R. G. Hanford, each of said last-mentioned certificates was similar in form, tenor, provisions and covenants to Exhibit A and to Certificate No. 48.

That on or about September 28, 1911, the afore-said certificates numbered 73, 74, 75, 78, 79, 86, 96, 98, 99 and 497, respectively, were surrendered by R. G. Hanford and the Hanford Investment Company to the United Properties Company and in lieu of part of said last-mentioned certificates a new certificate, [91] numbered 528 for 175 bonds, similar in form, tenor, provisions and covenants to said certificates numbered 45, 47 and 48, was signed by the officers of the United Properties Company signing certificates 45, 47, and 48, or by officers duly appointed

in the place thereof, and with the seal of the corporation affixed, was issued by said officers to R. G. Hanford.

That thereafter on or about September 28th, 1911, said R. G. Hanford surrendered to the United Properties Company the said certificate No. 528 and in lieu of part thereof, at said R. G. Hanford's request, a new certificate No. 529 for thirty-seven bonds similar in form, tenor, provisions and covenants to certificates numbered 45, 47 and 48, was signed by the said officers duly appointed in the place of the officers signing said last-mentioned certificates, and with the seal of the corporation affixed thereto, the said certificate No. 529 was issued by the said officers to R. B. Mott.

That on or about the 28th day of November, 1911, the said R. B. Mott surrendered to the said United Properties Company the said certificate No. 529 and in lieu of part thereof a certificate numbered 562 for one bond, similar in form, tenor, provisions and covenants to certificates numbered 45, 47 and 48, signed by the officers signing certificates numbered 45, 47 and 48 or officers duly appointed in the place thereof, was issued by said officers to said R. B. Mott.

That thereafter on or about the 15th day of February, 1912, said R. B. Mott transferred, assigned and set over to Ira M. Condit and Mary Ellen Kibbe as joint owners or to the survivor of them the said certificate No. 562.

That on or about the 28th day of November, 1911, the Hanford Investment Company surrendered to the United Properties Company [92] certificate

No. 549 and in lieu of part thereof, certificate No. 553 for twenty-five bonds, similar in form, tenor, provisions and covenants to Certificate No. 549 and signed by the officers signing Certificate No. 549 or officers duly appointed in the place thereof and having the seal of the United Properties Company affixed thereto was issued by said officers to Leo R. Dickie; that said Leo R. Dickie paid the said William Hammond, Jr., for said Certificate No. 553 a good, sufficient and valuable consideration.

That thereafter on January 5th, 1912, the said Leo R. Dickie surrendered to the United Properties Company Certificate number five hundred and fifty-three (553) and in lieu of part thereof, certificate number six hundred and sixteen (616) for twelve (12) bonds, similar in form, tenor, provisions and covenants to Certificate number five hundred and fifty-three (553) and signed by the officers signing certificate number five hundred and fifty-three (553) or officers duly appointed in the place thereof and having the seal of the United Properties Company affixed thereto was issued by said officers to R. B. Mott; that said R. B. Mott paid the said Leo R. Dickie for said certificate number six hundred and sixteen (616) a good, sufficient and valuable consideration.

That thereafter the said R. B. Mott transferred, assigned and set over to Ira M. Condit and Mary Ellen Kibbe as joint owners or to the survivor of them the said certificate number six hundred and sixteen (616).

That on or about February 15th, 1912, said Con-

dit and said Kibbe surrendered to the said United Properties Company certificates numbered six hundred and sixteen and five hundred and sixty-two (562) and in lieu thereof a new certificate numbered six hundred and sixty (660), a copy of which is set out in full [93] by the plaintiff in her complaint on file herein, was signed by the officers signing bond certificate number forty-seven (47) or officers duly appointed in the place thereof, the seal of the corporation was affixed and the said certificate was issued to said Ira M. Condit and Mary Ellen Kibbe as joint owners or to the survivors of them.

Interest was paid on the indebtedness evidenced by that part of certificates numbered 45, 47 and 48 which became merged by virtue of the surrender and re-issuance above referred to into certificate No. 660 for thirteen bonds of the par value of \$1000 each, which certificate is the one sued on in the above-entitled action. This interest was paid in semi-annual installments at the rate of five per cent per annum for the following periods:

from January 1st, 1911, to July 1st, 1911,

from July 1st, 1911, to January 1st, 1912,

from January 1st, 1912, to July 1st, 1912, and

from July 1st, 1912, to January 1st, 1913.

The said Kibbe and Condit received the installments of interest paid for the period from January 1st, 1912, to July 1st, 1912, from July 1st, 1912, to January 1st, 1913. Part of the first installment of interest was paid on July 1st, 1911, the balance thereof on November 18th, 1911, the second installment on the 2d of January, 1912, the third installment on

July 6th, 1912, and the fourth installment on January 9th, 1913.

During the time that each of the certificates hereinbefore referred to were issued there was kept in the office of the United Properties Company a certificate book containing documents numbered from 1 to 1500 inclusive, of the same form, tenor and containing the same provisions, terms and covenants contained in the certificate sued on, except that the name of the holder, the amount thereof and the date thereof were left blank and there were no signatures thereon and the seal of the corporation was not [94] affixed thereto. Attached to each of these certificates was a stub, When a certificate was issued, the name of the holder, the number of the certificate, the amount thereof and the date of issuance was written on the stub and then the certificate was detached from the stub and given to the holder after having been signed by the officers of the corporation and after having the seal affixed. When a certificate so issued was surrendered it was again affixed to its proper stub and the officers receiving the same noted on the stub that the certificate had been returned and the number of the certificate or certificates which were issued in lieu thereof. Certificates from number 1 to 1500 for various numbers of bonds and in various amounts were issued, surrendered and re-issued.

These transactions took place during the years 1911, 1912 and 1913. All of the directors knew that these transactions were taking place; all of the directors had at various times received certain of

these certificates. The said directors at all times during the last mentioned period held a majority in number of the shares of the capital stock issued by the said corporation.

On or about September 1st, 1911 F. M. Smith and W. S. Tevis and R. G. Hanford entered into an agreement in writing, a copy of which is hereto annexed, marked Exhibit D and is hereby referred to and made a part hereof for all purposes.

On the 25th day of April, 1915 the said Ira M. Condit died in the County of Alameda, State of California; the plaintiff, Mary Ellen Kibbe is the sole owner and holder of the certificate sued upon and is the same person as the Mary Ellen Kibby mentioned in the said certificate; she is the daughter of the said Ira M. Condit.

The laws and statutes of the State of Delaware during the [95] period from January, 1910 to date in reference to corporations are hereby referred to and made a part hereof for all purposes just as if the said laws and statutes had been offered and admitted in evidence at the trial of this action. There has been no law or statute during the last mentioned period in the State of Delaware requiring a corporation before creating or increasing any bonded indebtedness to comply with any proceedings or requirements similar or in substance or effect alike to those set forth in Section 359 of the Civil Code of the State of California. There has never been any laws or statute of the State of Delaware requiring a two-thirds vote of the stockholders or the written assent of $\frac{2}{3}$ of the stockholders in order to create

or increase a bonded indebtedness of a corporation.

It is stipulated that the foregoing statements of facts are admitted subject to any objection that either party may have thereto on the ground that the evidence of any of the said facts is incompetent, irrelevant or immaterial.

It is further stipulated that upon the trial of the action, either of the parties thereto, may introduce such other and further evidence supplementing the statement of facts contained in the foregoing which they may care to present subject, however, to any objection that such other and further evidence is incompetent, irrelevant and immaterial, and provided that if either party intends to introduce such other and further evidence, he shall notify the other party of his intention to introduce such other and further evidence at least five days before the date set for the trial of the said action.

Dated: June 24th, 1918.

HERBERT W. ERSKINE,

Attorney for Plaintiff.

R. P. HENSHALL,

Attorney for Defendant. [96]

Exhibit "A" to Admission of Certain Facts.

No. 4. The property and business of the company shall be managed and controlled by a Board of eight directors, who shall at all times be stockholders, and at least one of whom shall be an actual resident of Delaware.

They shall hold office until the next annual meeting of the stockholders or until others are elected

and qualified in their place and stead.

The number of directors may at any time be increased by an affirmative vote of a majority of the entire Board of Directors, at a special meeting called for that purpose, and in case of any such increase, the Board of Directors, shall have power to elect such additional directors to hold office until the next meeting of stockholders, and until the successors of such additional directors so elected, are elected and qualified.

If the office of any Director becomes vacant, by reason of death, resignation or disqualification, the remaining directors, by a majority vote, may elect a successor, who shall hold office for the unexpired term and until his successor is elected.

POWERS OF THE DIRECTORS.

No. 5. The Board of Directors shall have general management of the business of the Company, shall exercise the powers necessary to accomplish the purposes and object for which it is organized, as specified in its certificate of incorporation, and in addition to the powers and authorities by these By-laws expressly conferred upon them, may exercise all such powers and do all such acts and things, as may be exercised or done by the company, but subject, nevertheless, to the provisions of the statute, of the charter and of these By-laws, and to any regulation from time to time made by the stockholders, provided that no regulation so made shall invalidate any prior act of the Board of Directors which would have been valid if such regulation had not been made.

Without prejudice to the general powers con-

ferred by the last preceding clause the powers conferred by the certificate of incorporation, and the other powers conferred by these By-laws, it is hereby expressly declared that the Board of Directors shall have the foregoing powers, that is to say:

To purchase or otherwise acquire, for the Company any property, rights, or privileges which the company is authorized to acquire, at such prices and on such terms and conditions, and for such consideration as they may see fit.

At their discretion to pay for any property or rights acquired by the Company either wholly or partially in money or in stock, bonds, debentures or other securities of the company.

To appoint, and at their discretion to remove or suspend subordinate managers, officers, assistants, clerks, agents and servants, permanently or temporarily, and to determine their duties and fix, and from time to time change, their salaries or emoluments, and to require security in such instances and in such amounts as they think fit.

To confer by resolution, upon any officer of the Company the right to choose, appoint, remove or suspend such subordinate officers, agents or factors, and to determine their duties and fix and from time to time change their salaries and emoluments.

To appoint any person or persons to accept and hold in [97] trust for the Company any property belonging to the Company, or in which it has an interest, or for any other purpose, and to execute and do all such duties and things as may be requisite in relation to any such trust.

To create, make and issue mortgages, bonds, deeds of trust, trust agreements and negotiable or transferable instruments and securities, secured by mortgage or otherwise, and to do other acts and things necessary to effectuate the same.

To determine who shall be authorized to sign on the Company's behalf, bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

From time to time to provide for the management of the affairs of the Company at home or abroad in such manner as they think fit, and in particular, from time to time to delegate any of the powers of the Board of Directors to any committee, officer, or agent, and to appoint any persons to be the agents of the company with such powers (including the power to subdelegate) and upon such terms as may be determined.

MEETINGS OF THE STOCKHOLDERS.

No. 6. Meetings of the stockholders shall be held at the office of the Company in the City of San Francisco, State of California, or the City of Wilmington, State of Delaware, as may be determined by the Board of Directors.

Holders of common stock may vote at all meetings either in person or by proxy in writing. All proxies shall be filed with the secretary of the meeting before being voted upon.

A majority in amount of Common Stock issued and outstanding, represented by the holders in person or by proxy, shall be requisite at all meetings to con-

stitute a quorum for an election of Directors or the transaction of any other business.

The annual meeting of the stockholders shall be held on the 25th day of October at two o'clock, in the afternoon in each year, beginning in the year nineteen hundred and eleven, if not a legal holiday, and, if a legal holiday, then on the day following, when they shall elect, by a plurality vote, by ballot, a board of eight (8) directors to serve for one year, and until their successors are elected or chosen and qualified, each holder of common stock being entitled to one vote for each share of common stock standing registered in his or her name on the twentieth day preceding the election, exclusive of the day of such election.

MEETINGS OF DIRECTORS.

No. 7. The newly elected directors shall meet as soon as possible after their election, at the office of the Company, in the City of San Francisco, State of California, for the purpose of organization and otherwise, and no notice of such meeting, provided a majority of the whole board shall be present shall be necessary to the newly elected directors in order to legally constitute the meeting.

At the first meeting after their election the directors shall elect from among their number, a President, a First Vice-president and three other Vice-presidents, and shall also elect a treasurer, to hold office for one year and until others are [98] elected and qualified. A secretary shall be elected or appointed who may or may not be a director, and

whose term of service shall be subject to the pleasure of the Board of Directors.

Regular meetings of the Board of Directors may be held without notice at such time and place as may be determined, from time to time by resolution of the Board.

Notice of regular meetings may be mailed to each Director at his last known post office address by the secretary at least five days previously.

Five directors shall be necessary at all meetings to constitute a quorum for the transactions of business.

Special meetings of the Board may be called by the President on one day's notice to each Director, either personally or by wire; special meetings may be called in like manner on the request in writing of four directors.

STANDING COMMITTEES.

No. 8. The Board of Directors may appoint from their number, standing committees and may invest them with all their own powers subject to such conditions as they may prescribe, and all committees so appointed shall keep regular minutes of their transactions and shall cause them to be recorded in books kept for that purpose in the office of the Company, and shall report the same to the Board of Directors at their next regular meeting.

OFFICERS OF THE COMPANY.

No. 9. The officers of the Company shall consist of a President, a first Vice-president, and three other Vice-presidents Secretary, Treasurer, and

such other subordinate officers as may from time to time be elected or appointed by the Board of Directors.

One person may hold the office of Secretary and Treasurer, and if deemed advisable by the Board of Directors, a Vice-president may hold the offices of Vice-president, Treasurer, or a Vice-president and Secretary, but not the offices of Vice-president, Secretary and Treasurer.

OFFICERS HOW CHOSEN.

No. 10. At the first meeting after their election the Directors shall elect annually from among their own number a president and a first Vice-president, and three other Vice-presidents, and a treasurer, to hold office for one year and until their successors are elected and qualified. They shall not be subject to removal during their respective terms of office except for cause, nor shall their term of office be diminished during their tenure. The Board of Directors shall also appoint or elect a secretary whose term of office shall be subject to the pleasure of the Board.

DUTIES OF THE PRESIDENT.

No. 11. The president shall be the chief executive officer of the company; he shall preside at all meetings of the directors, he shall have general and active management of the business of the company; he shall see that all orders and resolutions of the Board of Directors are carried into effect; he shall execute all [99] contracts and agreements authorized by the Board of Directors; shall keep in safe custody the seal of the Company, and, when authorized by

the Board of Directors to affix the seal to any instrument requiring the same, and the seal when so affixed shall be attested by the signature of the Secretary.

He shall sign all certificates of stock.

He shall have general supervision and direction of all the other officers of the company, and shall see that their duties are properly performed.

He shall submit a report of the operations of the company for the fiscal year to the Board of Directors at their first regular meeting in each year, and to the stock holders at their annual meeting, and from time to time shall report to the Board of Directors all matters within his knowledge which the interests of the Company may require to be brought to its notice.

He shall be ex-officio a member of all standing committees and shall have the general powers and duties of supervision and management usually vested in the office of the president of a corporation.

VICE-PRESIDENT.

No. 12. The First Vice-president shall be vested with all the powers and authority, and shall perform all the duties and exercise all the functions of the president in his absence from the principal place of business, to wit: the State of California, or in case of the inability of the President, for any reason, to act; and in the event of absence or inability for any reason, of both the President and First Vice-president, all the powers, duties, authority and functions of the President shall devolve upon one of the other Vice-presidents, who shall be designated by the first Vice-president, and in the event of the absence from the

State of California or the inability for any reason of the Vice-president thus selected to act, he shall in like manner designate a Vice-president to act as President.

SECRETARY.

No. 13. The Secretary shall attend all sessions of the Board of Directors and act as Clerk thereof and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform all duties for the Standing Committees when required.

He shall see that proper notice is given of all meetings of the holders of Common Stock of the Company, and of the Board of Directors, and shall perform such other duties as may be prescribed from time to time by the Board of Directors or the President. He shall be sworn to the faithful discharge of his duty.

TREASURER.

No. 14. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all money and other valuable effects in the name and to the credit of the company, in such depositaries as may be designated by the Board of Directors.

He shall disburse the funds of the Company as may be ordered by the Board of Directors, or the President, taking proper [100] vouchers for such disbursements, and shall render to the President and Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his transactions as Treasurer and of

the financial condition of the company.

If required by the Board of Directors, he shall give the Company a Bond in form and in a sum with security satisfactory to the Board of Directors, for the faithful performance of the duties of his office, and the restoration to the Company in case of his death, resignation or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession belonging to the company. He shall perform such other duties as the Board of Directors may from time to time prescribe or require.

Certificates of stock when signed by the President shall be countersigned by the Treasurer. He shall keep the accounts of the stock registered and transferred in such form and manner and under such regulations as the Board of Directors may prescribe.

DUTIES OF OFFICERS MAY BE DELEGATED.

No. 16. In case of the absence of any officer of the company the Board of Directors may delegate the powers or duties of such officer to any other officer or to any Director for the time being.

EXECUTIVE COMMITTEE.

No. 25. The Board of Directors may appoint annually an Executive Committee of three persons from their own number.

The executive committee shall not have authority to alter or amend the By-laws, but shall exercise all other powers of the Board of Directors between the meetings of said Board.

The executive committee shall appoint a Secre-

tary, who shall keep regular minutes of the actions of said committee, and report the same to the Board of Directors and the Board shall adopt such report as a part of its proceedings.

The Board of Directors may designate for such Committee, a Chairman, who shall continue to be Chairman of the Committee during the pleasure of the Board.

The Board of Directors shall fill vacancies in the Executive Committee by election from the Directors, and at all times it shall be the duty of the Board of Directors to keep the membership of such committee full, with due regard to the qualifications necessary for such membership.

All action by the Executive Committee shall be reported to the Board of Directors at its meeting next succeeding such action.

The Executive Committee shall fix its own rules of procedure, and shall meet where and as provided by such rules, or by resolution of the Board of Directors, but in every case, the presence of at least two members shall be necessary to constitute a quorum.

In every case the affirmative vote of a majority of all the members of the Executive Committee present at the meeting shall be necessary to the adoption of any resolution.

The powers of this Executive Committee, during intervals between meetings of the Board of Directors shall extend to the purchase of property and the execution of legal instruments with or without the corporate seal, in such manner as such Committee shall deem to be for the best interests of the Com-

pany, in all case in which specific directions have not been given by the Board of Directors. [101]

During the intervals between the meetings of the Executive Committee, and subject of its review, the President of the Board of Directors and the Chairman of the Executive Committee together, shall possess and may exercise any of the powers of the Committee, except as from time to time shall be otherwise provided by resolution of the Board of Directors.

CONTRACTS.

No. 29. The Board of Directors in its discretion may submit any contract or act for approval or ratification at any annual meeting of the holders of Common stock, or at any meeting of such stockholders called for the purpose of considering any such act or contract; and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the Common Stock of the Company which is present in person or by proxy at such meeting (provided that a lawful quorum of holders of Common stock be there represented in person or by proxy) shall be as valid as binding upon the company and upon all the stockholders as though it has been approved or ratified by every stockholder of the company.

Exhibit "D" to Admission of Facts.

Agreement made this — day of September, 1911, between F. M. Smith of the City of Oakland, County of Alameda, State of California, W. S. Tevis of the City of Bakersfield, County of Kern and State

aforesaid, and R. G. Hanford of the City and County of San Francisco, State of California.

WITNESSETH:

That whereas said F. M. Smith did on or about the 25th day of October, 1910 enter into an agreement with said W. S. Tevis and said R. G. Hanford by the terms whereof said F. M. Smith did among other things agree to deliver to said R. G. Hanford or to the United Properties Company of California, a corporation, as his nominee not less than 75% of the total issued shares of the Oakland Terminal and San Francisco, Oakland, and San Jose Consolidated Railways and of each of them,

And whereas the total issued shares of said Company are as follows:

Oakland Traction Company,

108,750 shares of common; 70,500 shares of preferred. [102]

San Francisco, Oakland and San Jose Consolidated Railways,

27,500 shares of common

50,000 shares of preferred.

And whereas the amount of stocks to be delivered under said agreement by said F. M. Smith were as follows:

Oakland Traction Company,

97,437.3 shares of common

37,000.3 shares of preferred.

San Francisco, Oakland and San Jose Consolidated Railways,

26,078.5 shares of common and

32,050 shares of preferred.

And whereas on the 18th day of August, 1911 deliveries had been made as follows:

Oakland Traction,

94,801 shares of common;

18,337 shares of preferred.

San Francisco and San Jose Consolidated Railways,

27,300 shares of common;

19,775 shares of preferred.

And whereas, certain extensions have from time to time been granted to said Smith, and he is desirous of further extension of time, in consideration of the premises and of other good and sufficient considerations, Tevis and Hanford hereby extend the time for delivery of the shares of stock remaining to be delivered by F. N. Smith until the first day of September 1912, and the said Smith hereby agrees that he will, on or before said date, make delivery of a sufficient number of shares of the capital stock of said Traction Co. and said San Francisco, Oakland and San Jose Consolidated Railway to make, together with those already delivered, not less than 66 $\frac{2}{3}$ % of the total issued stock of each of said companies, and as soon as possible thereafter, and in no event later than the first day of March, 1913, to deliver the entire balance remaining to be delivered by him, that is to say, sufficient to make 75% of the total issued stock of each of said companies, as hereinabove set forth and that he will at the time of such deliveries accept therefor the securities exchangeable therefor under said agreement hereinabove referred to between said F. M. Smith, W. S. Tevis and R. G. Hanford.

IN WITNESS WHEREOF, the parties hereto have hereunto signed their names the day and year first above written.

(Signed) F. M. SMITH,
W. S. TEVIS.
R. G. HANFORD." [103]

Stipulation Re Admission of Facts, etc.

(Title of Court and Cause.)

“STIPULATION.

Whereas the above-entitled action is at issue and ready for trial.

Now, Therefore, the facts set forth in the admission of facts filed in the action of Kibbe vs. United Properties Company, pending in the above entitled court and bearing No. 159671½ are hereby admitted subject to the same conditions and stipulations contained in said admission of facts with the following exceptions, which are hereby admitted, to wit:

1. The above entitled action is commenced not by the person to whom the certificates referred to in the complaint on file herein were issued, but by the assignee of the person who procured the certificates issued to him for a good, valuable and sufficient consideration.

2. Each of the certificates sued upon in the above entitled action came to the assignor of the plaintiff through the same process that Certificate No. 660, held by the plaintiff, Mary Ellen Kibbe, in the said action of Kibbe vs. United Properties Company came to her from Certificates numbered 45, 47 and 48. The original certificates in place of which or in

place of a portion of which each of the certificates sued on in the above entitled action was issued, were delivered to R. G. Hanford or to his nominee in the same manner and at the same time that certificates numbered 45, 47 and 48 referred to in the statement of facts in the case of Kibbe vs. United Properties Company were delivered to him.

3. Each of the certificates referred to in the complaint in the above-entitled action was assigned to the plaintiff therein by the holder thereof on the respective dates upon which it is [104] alleged in the complaint each certificate was assigned to this plaintiff.

4. At the time each of the assignments was made all the right, title and interest of the holder of the certificate so assigned in and to the said certificate and in and to any cause of action, claim or demand against the said United Properties Company, its stockholders or directors or officers, arising out of or by virtue of said certificate was assigned to the plaintiff in the above-entitled action, and the said plaintiff ever since has been and is now the owner and holder of said certificate and of said claim, demand and cause of action so assigned.

The said admission of facts in the action of Kibbe vs. United Properties Company, and the conditions and stipulations therein contained are hereby referred to and hereby adopted and made a part hereof for all purposes with the foregoing exceptions.

Dated July 1st, 1916.

HERBERT W. ERSKINE,

Attorney for Plaintiff.

R. F. HENSHALL,

Attorney for Defendant." [105]

Stipulation Re Admission of Facts, etc.

(Title of Court and Cause.)

“STIPULATION.

Whereas the above-entitled action is at issue and ready for trial,

Now, Therefore, the facts set forth in the admission of facts filed in the action of Kibbe vs. United Properties Company, pending in the above-entitled court and bearing No. 15,967 $\frac{1}{2}$, are hereby admitted subject to the same conditions and stipulations contained in said admission of facts with the following exceptions, which are hereby admitted, to wit:

1. The above-entitled action is commenced not by the persons to whom the certificates referred to in the complaint on file herein, were issued, but by the assignee of several persons each of whom procured the certificate, issued to him or transferred and assigned to him by its previous owner, for a good, valuable and sufficient consideration.

2. Each of the certificates sued upon in the above-entitled action came to the assignors of the plaintiff through the same process that Certificate No. 660, held by the plaintiff, Mary Ellen Kibbe, in the said action of Kibbe vs. United Properties Company, came to her from Certificates numbered 45, 47 and 48. The original certificates in place of which or in place of a portion of which each of the certificates sued on

in the above-entitled action was issued, were delivered to R. G. Hanford or to his nominee in the same manner and at the same time that certificates numbered 45, 47 and 48, referred to in the statement of facts in the case of Kibbe vs. United Properties Company were delivered to him.

3. Each of the certificates referred to in the complaint in the above-entitled action was assigned to the plaintiff therein [106] by the various holders thereof on the respective dates upon which it is alleged in the complaint each certificate was assigned to this plaintiff.

4. At the time each of these assignments was made, all the right, title and interest of the holder of the certificate so assigned in and to the said certificate and in and to any cause of action, claim or demand against the said United Properties Company, its stockholders or directors or officers arising out of or by virtue of said certificate was assigned to the plaintiff in the above-entitled action, and the said plaintiff ever since has been and is now the owner and holder of said certificate and of said claim, demand and cause of action so assigned.

The said admission of facts in the action of Kibbe vs. United Properties Company, and the conditions and stipulations therein contained are hereby referred to and hereby adopted and made a part hereof for all purposes with the foregoing exceptions.

Dated July 1st, 1916.

HERBERT W. ERSKINE,

Attorney for Plaintiff.

R. F. HENSHALL,

Attorney for Defendant." [107]

Mr. HENSHALL.—I will admit that the certificates in this action were issued from the books which have been produced and referred to by Mr. Tevis, and which were kept in the office of the United Properties Company, and I will admit that the bonds have never been issued and that a demand was made.

On cross-examination the witness testified as follows:

I know that Mr. Hanford made two offers to the United Properties Company, offers Nos. 1 and 2. I do not know whether or not certificates Nos. 45, 46, 47 and 48 were issued to Mr. Hanford, pursuant to offer No. 1 or offer No. 2. I assumed that Mr. Erskine was referring to both offers when I answered his questions.

Mr. HENSHALL.—Q. On offer No. 2, Mr. Tevis, was an offer by Mr. Hanford and which has been introduced in evidence, but not directly referred to, but wherein and whereby he offered to deliver to the United Properties Company stock of the Oakland Traction Company and of the San Francisco, Oakland & San Jose Consolidated Railways,—just for the purpose of directing your attention to that?

A. Yes.

Q. And the resolution which counsel himself has introduced specifies the number of shares of stock of those respective companies, common and preferred, which Mr. Hanford was to deliver to the United Properties Company? A. Yes.

Q. Do you know whether or not Mr. Hanford ever delivered to the United Properties Company?

A. Yes. [108]

Q. Do you know whether or not Mr. Hanford ever delivered to the United Properties Company the entire number of shares, common and preferred of the Oakland Traction and of the San Francisco, Oakland & San Jose Consolidated Railways, referred to in offer No. 2? A. I know that he did not.

Q. Can you state accurately or even approximately how much he did not deliver?

A. I think I can state very approximately; he failed to deliver 30,190 shares of preferred stock of the Oakland Traction Company and the San Francisco, Oakland & San Jose Consolidated; I think that is absolutely correct, but I may be mistaken as to a few shares.

Q. Do you know, Mr. Tevis, whether or not there was issued to Mr. Hanford pursuant to offer No. 2, all of the stocks and bonds which he asked to have issued to him pertaining to that offer, notwithstanding his failure to deliver?

A. They were so issued.

On redirect examination, the witness testified as follows:

Mr. ERSKINE.—Q. Approximately, in fractions, how much did Mr. Hanford deliver of the stocks and bonds, which he promised to deliver in offer No. 2?

A. He delivered all of the common stock eventually, and all of the preferred stock with the exception of 30,190 shares, as near as I can recall of the two companies; I can not remember the proportion of each company.

Q. Now, Mr. Tevis, do I understand you to state that [109] you cannot say now whether or not the

certificates 45, 46, 47 and 48 were issued to Mr. Hanford for stocks which he gave under offer No. 1, or for the stock which he gave under offer No. 2?

A. I can answer that in this way,—if that was all of the certificates for bonds that Mr. Hanford received from us,—if it is 10,466—

Q. —10,411?

A. He received no other certificates for offer No. 2; undoubtedly that number of certificates would comprise both offers.

Q. Now, I call your attention to the consideration of the fact that in his offer No. 2 he asks for no certificates or bonds. In his offer No. 1 he asks for 585,803 shares of common stock, 469,646 shares of preferred, and 2,358,579 of the debenture bonds, but he asks for no bonds—no certificates. Now, in view of that fact, can you state whether or not Bonds 45, 46, 47 and 48, were issued to him in compliance with offer No. 1?

A. I will have to answer that in a somewhat round-about way; a part of the consideration to Mr. Smith for his contribution of these stocks of the Railroad Companies was \$3,200,000 worth of these particular certificates; consequently, it seems that the offer must have included both considerations.

Q. The offer is correct as it is written there, is it not? A. I presume that it is correct.

Q. And offer No. 2, as it is written there did not refer to any certificates for bonds, that Hanford was not to get any certificate for the stock he offered in that offer No. 2? [110]

The COURT.—In Offer No. 2.

A. That is a very difficult question to answer.

The COURT.—That is more a question of law than of fact. The witness does not profess to say they were not all issued under Offer No. 1.

A. Those certificates, they were delivered to Mr. Smith—I know that his proportion of those bonds, of the \$10,460,000, were delivered to him in consideration of this delivery to the Company through Hanford of the stock of the railroad corporation. There is no question about that fact.

Mr. ERSKINE.—In other words, Mr. Hanford was to pay Mr. Smith some of the bonds he got from Offer No. 1, in order to get him to deliver under Offer No. 2?

A. That appears to be the case; I never knew that before but that appears to be the case.

On recross-examination, the witness testified, as follows:

The United Properties Company was formed pursuant to an agreement between Mr. F. M. Smith, R. G. Hanford and myself, wherein and whereby the respective contributions of each to the Company were set forth. The offers which Mr. Hanford made to the company were offers made pursuant to the terms of the original undertaking between Mr. Smith, Mr. Hanford and myself.

The plaintiff then rested. [111]

Mr. HENSHALL.—Do you admit, Mr. Erskine, so as to save a good deal of time, that no resolution of the Board of Directors of the United Properties Company was ever passed authorizing the issuance of any of the certificates originally or subsequently

upon which you have brought this suit other than the resolution that you yourself have offered in evidence and which you think authorized it?

Mr. ERSKINE.—I will admit that.

The COURT.—No specific resolution—no resolution more specific than the one offered?

Mr. ERSKINE.—No. And the stockholders resolution which I also read.

Mr. HENSHALL.—Will you admit that no attempt even was ever made by this corporation to create a bonded indebtedness to comply with Section 359 of the Civil Code of the State of California?

Mr. ERSKINE.—That is admitted. I will admit no attempt was ever made to comply with Section 359 of the Civil Code of the State of California.

Mr. HENSHALL.—That is all, your Honor.
[112]

The foregoing was all the evidence in the case.

Thereafter and on the 9th day of July, 1917, the said Court entered its order herein that judgment be entered in favor of the plaintiff in said action and against the defendant in said action in the sum subsequently specified in the judgment, which was then and thereafter entered in each of said actions, to which said ruling, order and decision the said defendant now excepts.

And now, within the time required by law and within the rules of this court, it appearing that the settlement of said bill of exceptions has been continued to the succeeding term, in which said judgment was rendered, the defendant proposes the foregoing as and for his said Bill of Exceptions and

prays that the same may be settled and allowed as correct.

R. P. HENSHALL,
Attorney for Defendant. [113]

Stipulation Re Settlement of Bill of Exceptions.

The settlement of the foregoing bill of exceptions having been regularly continued to the present term of court, it is hereby stipulated and agreed that said bill of exceptions may be presented to the Judge who tried the above-entitled case and settled, certified and allowed.

HERBERT W. ERSKINE,
Attorney for Plaintiff.

R. P. HENSHALL,
Attorney for Defendant.

Order Settling Bill of Exceptions.

The settlement of the foregoing bill of exceptions having been regularly continued to the present term of court, and said bill of exceptions being now presented in due time and found to be correct, the same is hereby settled, certified and allowed as a true bill of exceptions taken upon the trial of the above-entitled action.

Dated March 13, 1918.

WM. C. VAN FLEET,
Judge.

[Endorsed]: Filed Mar. 13, 1918. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [114]

*In the District Court of the United States, in and for
the Northern District of California, Second Di-
vision.*

No. 15,967½.

MARY ELLEN KIBBE,

Plaintiff,

vs.

THE UNITED PROPERTIES COMPANY OF CALIFORNIA, a Corporation, and ALBERT HANFORD, W. S. TEVIS, C. E. GILMAN, LEO R. DICKEY, M. O'CONNELL and HARRY W. DAVIS, as Trustees, Acting for and on Behalf of said THE UNITED PROPERTIES COMPANY OF CALIFORNIA, a Defunct Corporation, Substituted Defendants Herein,

Defendants.

Petition for Writ of Error.

To the Honorable Court Above-named:

Now come the substituted defendants herein, Albert Hanford, W. S. Tevis, C. E. Gilman, Leo R. Dickey, S. J. Bell, M. O'Connell, and Harry W. Davis, trustees of the original defendant, The United Properties Company of California, who were directors in office at the time said The United Properties Company of California, original defendant herein, forfeited its charter for nonpayment of taxes, and who are made by law the trustees thereof, and acting for and on behalf of said The United Properties Company of California, and as its trustees, and

not otherwise, by their attorney, R. P. Henshall, Esq., and respectfully show that on the 9th day of July, 1917, the said Court entered its order herein that judgment be entered in favor of the plaintiffs in said action and against the defendant in said action. [115]

Your petitioners feel themselves aggrieved by said order and judgment entered thereon, as aforesaid, and herewith petition the Court for an order allowing them to procure a Writ of Error to the Circuit Court of Appeals of the United States, for the Ninth Circuit, sitting at San Francisco, under the laws of the United States in such cases made and provided.

WHEREFORE, the premises considered, your petitioners pray that a writ of error do issue, that an appeal in their behalf to the United States Circuit Court of Appeal, for the Ninth Circuit, sitting at San Francisco, in said Circuit, for the correction of errors complained of and herewith assigned, be allowed, and that an order be made fixing the amount of security to be given by the plaintiffs in error, conditioned as the law directs.

R. P. HENSHALL,

Attorney for Defendant.

Writ of error granted upon the foregoing petition upon the petitioners filing a bond in the sum of \$300.00 to be conditioned as required by law.

Dated January 7, 1918.

OSCAR A. TRIPPET,

Judge.

Service of the within Petition and Order is hereby admitted this — day of January, 1918.

KEYES & ERSKINE,
Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 7, 1918. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [116]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,967½.

MARY ELLEN KIBBE,

Plaintiff,

vs.

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Corporation, and AL-
BERT HANFORD, W. S. TEVIS, C. E.
GILMAN, LEO R. DICKEY, M. O'CON-
NELL and HARRY W. DAVIS, as Trustees,
Acting for and on Behalf of Said THE
UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Defunct Corporation, Sub-
stituted Defendants Herein,

Defendants.

Assignment of Errors.

Now come the substituted defendants herein,
Albert Hanford, W. S. Tevis, C. E. Gilman, Leo. R.
Dickey, S. J. Bell, M. O'Connell and Harry W.
Davis, trustees of the original defendant, The United

Properties Company of California, who were directors in office at the time said The United Properties Company of California, original defendant herein, forfeited its charter for nonpayment of taxes, and who are made by law the trustees thereof, and acting for and on behalf of said The United Properties Company of California, and as its trustees, and not otherwise, by their attorney, assign errors in the decision and judgment and in the proceedings herein, as follows, to wit: [117]

I.

The decision and order of said District Court holding and adjudging herein that the complaint of plaintiff herein, in the original action above entitled, stated facts sufficient to constitute a cause of action, and holding that said complaint stated facts sufficient to constitute a cause of action, was and is error and is here assigned as error.

II.

The decision and holding of said District Court that the complaint on file in the above-entitled action need contain no allegation that the bonds referred to in said complaint were certified and were ever ready for delivery, or that an unreasonable time had elapsed for their delivery, was and is error, and is here assigned as error.

III.

The holding and decision of the Court herein to the effect that the original defendant, The United Properties Company of California, had ever made or entered into the contract referred to in said com-

plaint, was and is error, and is here assigned as error.
[118]

IV.

The ruling and decision of the Court herein to the effect that a bonded indebtedness of a corporation, to wit, said The United Properties Company of California, can be created either under the laws of Delaware or under the laws of California, without any resolution on the part of the directors authorizing it to be created, was and is error, and is here assigned as error.

V.

The decision of the Court herein that the plaintiffs herein, who purchased the instruments referred to in the complaint herein from R. G. Hanford and who, as the evidence shows, made an offer to the Company at the time he accepted the said instruments and assigned the same to the plaintiffs herein, such instruments not being negotiable, were not bound by and are not chargeable with knowledge and notice of the fact that Section 359 of the Civil Code of the State of California had not been complied with, but are entitled to recover notwithstanding such compliance, was and is error, and is here assigned as error.

VI.

The decision of the Court herein that the instrument in question, which instruments are contracts to create a contract, need not be executed with the same formality with which the contract referred to in said instrument would be required to be executed, was and is here assigned as error.

VII.

The decision of the Court herein that the rights and remedies of the plaintiffs herein, if they have any such rights and remedies, are not in the form of an action for breach of a [119] special contract against the corporation, but are upon a general assumpsit against the corporation or against R. G. Hanford, was and is error, and is here assigned as error.

VIII.

The order and judgment of the Court herein, directing that judgment be entered in favor of the plaintiffs, and each of them, was and is error and is here assigned as error.

IX.

The failure and refusal of the Court herein to order and enter judgment for the defendant upon the permitted and stipulated facts, found in the record herein, was and is error, and is here assigned as error.

X.

The ruling and holding of the trial court, admitting the minutes of February 24, 1911, purporting to be a record of a corporate meeting of The United Properties Company of California, held on that date, was and is error and is here assigned as error,—the same being specified in defendant's bill of exceptions herein, as Exception No. 1.

XI.

The ruling and holding of the Court herein, permitting in evidence, over the objection of defendant, the minutes of the stockholders' meeting of Decem-

ber 5, 1911, purporting to be a record of a meeting of the stockholders of the defendant, The United Properties Company, as of that date, was and is error and is here assigned as error,—the same being designated in [120] said bill of exceptions as defendant's Exception No. 2.

XII.

The ruling and holding of the trial Court herein that the plaintiffs herein were entitled to a judgment against the defendant, The United Properties Company of California, in any sum of money whatever, based upon the alleged cause of action set forth in said complaint, was and is error, and is here assigned as error.

WHEREFORE, these defendants pray that the order and judgment of said District Court of the United States, for the Northern District of California, Second Division, be reversed and that they have such other and further relief in the premises, based upon this assignment of errors, as shall seem meet.

R. P. HENSHALL,

Attorney for Defendant.

Service of the within Assignment of Errors is hereby admitted this — day of January, 1918.

KEYES & ERSKINE,

Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 7, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [121]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,967 $\frac{1}{2}$.

MARY ELLEN KIBBE,

Plaintiff,

vs.

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Corporation, and AL-
BERT HANFORD, W. S. TEVIS, C. E.
GILMAN, LEO R. DICKEY, M. O'CON-
NELL and HARRY W. DAVIS, as Trustees,
Acting for and on Behalf of Said THE
UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Defunct Corporation, Sub-
stituted Defendants Herein,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:

That we, the United Properties Company of Cali-
fornia, a corporation, and Albert Hanford, W. S.
Tevis, C. E. Gilman, Leo R. Dickey, S. J. Bell,
M. O'Connell and Harry W. Davis, as trustees of the
original defendant, The United Properties Com-
pany of California, who were directors in office at the
time said The United Properties Company of Cali-
fornia, original defendant herein, forfeited its
charter for nonpayment of taxes, and who are made

by law the trustees thereof, and acting for and on behalf of said The United Properties Company of California, and as its trustees, as principals, and National Surety Company, a corporation organized and existing under the laws of the State of New York and authorized to transact surety business in the State of California, as Surety, are held and firmly bound unto Mary Ellen Kibbe in the sum of Three Hundred (\$300) Dollars, lawful money of the United States, to be paid to her and to her [122] executors, administrators and assigns, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and each of our successors and assigns, by these presents.

Sealed with our seals and dated this 5th day of January, A. D. 1918.

WHEREAS, the above-named defendants have prosecuted a Writ of Error to the Circuit Court of Appeals of the United States, to reverse the judgment of the District Court of the United States for the Northern District of California in the above-entitled cause;

NOW, THEREFORE, the condition of this obligation is such that if the above-named defendants shall prosecute their said Writ of Error to effect and answer all costs if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

Dated January 5, 1918.

THE UNITED PROPERTIES COMPANY
OF CALIFORNIA.

By R. P. HENSHALL,
Its Attorney.

ALBERT HANFORD,

W. S. TEVIS,

C. E. GILMAN,

LEO R. DICKEY,

S. J. BELL,

M. O'CONNELL,

HARRY W. DAVIS,

As Trustees.

By R. P. HENSHALL,
Their Attorney.

NATIONAL SURETY COMPANY.

[Corporal Seal]

By FRANK L. GILBERT,
Its Attorney in Fact.

(Canceled Documentary Stamp National Surety
Co. N. Y., Jan. 5, 1918. Agency at San Francisco.)

Approved January 7, 1918.

OSCAR A. TRIPPET,
Judge. [123]

The premium charged for this bond is Ten dollars
per annum.

State of California,
City and County of San Francisco,—ss.

On this fifth day of January in the year one thou-
sand nine hundred and eighteen, before me, Julius
Calmann, a Notary Public in and for the City and
County of San Francisco, State of California, resid-

BERT HANFORD, W. S. TEVIS, C. E. GILMAN, LEO R. DICKEY, M. O'CONNELL and HARRY W. DAVIS, as Trustees, Acting for and on Behalf of Said THE UNITED PROPERTIES COMPANY OF CALIFORNIA, a Defunct Corporation, Substituted Defendants Herein,

Defendants.

Prayer for Reversal.

To the Honorable, the Circuit Court of Appeals of the United States for the Ninth Circuit:

Come now the United Properties Company of California, a corporation, and Albert Hanford, W. S. Tevis, C. E. Gilman, Leo R. Dickey, S. J. Bell, M. O'Connell and Harry W. Davis, as trustees of the original defendant, The United Properties Company of California, plaintiffs in error, and pray the Court to reverse the judgment of the District Court of the United States, for the Northern District of California, Second Division, made and entered in the above-entitled cause on the 9th day of July, 1917, and for such other and further relief as may be required from the nature of the cause.

R. P. HENSHALL,

Attorney for Plaintiffs in Error. [125]

Service of the within prayer for reversal is hereby admitted this 3d day of January, 1918.

KEYES & ERSKINE,

Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 7, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [126]

*In the Southern Division of the District Court of the
United States, in and for the Northern District
of California, Second Division.*

No. 15,967½.

MARY ELLEN KIBBE,

Plaintiff,

vs.

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Corporation, et al.,

Defendants.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify the foregoing one hundred twenty-six (126) pages, numbered from 1 to 126, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$59.40; that said amount was paid by the attorney for the defendants, and that the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District

dividuals, as trustees, are now the substituted defendants in said action and are the defendants in error, a manifest error hath happened, to the great damage of the said The United Properties Company of California, and of the substituted defendants therein, to wit, said Albert Hanford, W. S. Tevis, C. E. Gilman, Leo R. Dickey, S. J. Bell, M. O'Connell and Harry W. Davis, as trustees, acting for and on behalf of said The United Properties Company of California a defunct corporation, plaintiffs in error, as by their complaint appears:

We being willing that error if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 7th day of January, in the year of our Lord, One Thousand

to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,

Clerk.

Citation of Writ of Error.

UNITED STATES OF AMERICA, ss:

The President of the United States, To Mary Ellen Kibbe, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District for the Northern District of California, Second Division, wherein The United Properties Company of California, and the substituted defendants therein, to wit: Albert Hanford, W. S. Tevis, C. E. Gilman, Leo R. Dickey, S. J. Bell, M. O'Connell and Harry W. Davis, as trustees, acting for and on behalf of said The United Properties Company of California, a defunct corporation, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable United States District

Judge for the Ninth Circuit this — day of January, A. D. 1918.

OSCAR A. TRIPPET,
United States Dist. Judge. [129]

Service of within citation and receipt of a copy this 7th day of January, 1918.

HERBERT W. ERSKINE,
By. A. S. K.
Attorney for Plaintiff & Plaintiff in Error.

[Endorsed]: Original. No. 15967½. United States District Court for the Northern District of California, Second Division. Mary Ellen Kibbe, Plaintiff in Error, vs. The United Properties Company of California, a Corporation et al., Defendants in Error. Citation on Writ of Error. Filed Jan. 7, 1918. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 3192. United States Circuit Court of Appeals for the Ninth Circuit. The United Properties Company of California, and the Substituted Defendants therein, to wit: Albert Hanford, W. S. Tevis, C. T. Gilman, Leo R. Dickey, S. J. Bell, M. O'Connell and Harry W. Davis as Trustees, Acting for and on Behalf of said The United Properties Company of California, a Defunct Corporation, Plaintiffs in Error, vs. Mary Ellen Kibbe, Defendant in Error. Transcript of Record. Upon Writ of Error to the Southern Division of the United States

District Court of the Northern District of California,
Second Division.

Filed July 31, 1918.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

No. 15,967½.

MARY ELLEN KIBEE,

Plaintiff,

vs.

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Corporation, and ALBERT
HANFORD, W. S. TEVIS, C. E. GILMAN,
LEO R. DICKEY, M. O'CONNELL and
HARRY W. DAVIS, as Trustees, Action for
and on Behalf of said The United Properties
Company of California, a Defunct Corpora-
tion, Substituted Defendants Herein,
Defendants.

**Order Enlarging Time to and Including March 5,
1918, to File Record and Docket Cause in
Appellate Court.**

Good cause appearing therefor it is hereby ordered
that the Defendants above named being the Plain-

tiffs in error in said entitled action may have and they are hereby given to and including March 5, 1918 within which to file the record on their writ of error issued in the above-entitled cause, and in which to docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated, February 6, 1918.

WM. W. MORROW,
Judge of the United States Circuit Court of Appeals,
Ninth Circuit.

[Endorsed]: No. 15967½. Dept. —. Superior Court United States Circuit Court of Appeals for the Ninth Circuit, State of California. Mary Ellen Kibee, Plaintiff, The United Properties Company, Defendants. Order Enlarging Time to File Record. Filed Feb. 6, 1918. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, et al.,

Plaintiffs in Error,

vs.

MARY ELLEN KIBBE,

Defendant in Error.

**Order Enlarging Time to and Including April 5,
1918, to File Record and Docket Cause in
Appellate Court.**

Good cause being shown, it is hereby ordered that

the plaintiffs in error may have to and including the 5th day of April 1918, within which to file the record on writ of error and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated March 5, 1918.

WM. W. MORROW,
United States Circuit Judge and Judge of the U. S.
Circuit Court of Appeals for the Ninth Judicial
Circuit.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Apr. 5, 1918, to File Record thereof and to Docket Case. Filed Mar. 5, 1918. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, et al.,

Plaintiffs in Error,

vs.

MARY ELLEN KIBBE,

Defendant in Error.

**Order Enlarging Time to and Including May 4, 1918,
to File Record and Docket Cause in Appellate
Court.**

Good cause being shown, it is hereby ordered that the plaintiffs in error may have to and including the

4th day of May, 1918, within which to file the record on writ of error and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated April 4, 1918.

WM. W. MORROW,
Judge of the U. S. Circuit Court of Appeals.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to May 4, 1918, to File Record thereof and to Docket Case. Filed Apr. 4, 1918. F. D. Monekton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Corporation, et al.,
Plaintiffs in Error,
vs.

MARY ELLEN KIBBE,
Defendant in Error.

**Order Enlarging Time to and Including June 3, 1918,
to File Record and Docket Cause in Appellate
Court.**

Good cause being shown, it is hereby ordered that the plaintiffs in error in the above-entitled cause may have to and including the 3d day of June, 1918, within which to file the record on writ of error and docket the cause in the United States Circuit Court

of Appeals for the Ninth Circuit.

Dated May 3, 1918.

WM. W. MORROW,

Judge of the United States Circuit Court of Appeals
for the Ninth Judicial Circuit.

[Endorsed]: No. ——. United States Circuit
Court of Appeals for the Ninth Circuit. Order
Under Rule 16 Enlarging Time to June 3, 1918, to
File Record Thereof and to Docket Case. Filed
May 3, 1918. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Judicial Circuit.*

THE UNITED PROPERTIES COMPANY OF
CALIFORNIA, a Corporation, et al.,
Plaintiffs in Error,

vs.

MARY ELLEN KIBBE,

Defendant in Error.

**Order Enlarging Time to and Including July 3, 1918,
to File Record and Docket Cause in Appellate
Court.**

Good cause being shown, it is hereby ordered that
the plaintiffs in error in the above-entitled cause may
have to and including July 3, 1918, within which to
file the record on writ of error and docket the cause
in the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.

Dated June 3, 1918.

WM. W. MORROW,
Judge of the U. S. Circuit Court of Appeals for the
Ninth Circuit.

[Endorsed]: No. —. United States Circuit
Court of Appeals for the Ninth Circuit. Order
Under Rule 10 Enlarging Time to July 3, 1918, to
File Record Thereof and to Docket Case. Filed
Jun. 3, 1918. F. D. Monckton, Clerk.

*United States Circuit Court of Appeals for the
Ninth Judicial Circuit.*

UNITED PROPERTIES COMPANY OF CALI-
FORNIA, a Corporation,
Plaintiffs in Error,

vs.

MARY ELLEN KIBBE,
Defendant in Error.

**Order Enlarging Time to and Including August 2,
1918, to File Record and Docket Cause in
Appellate Court.**

Good cause being shown, it is hereby ordered that
the plaintiffs in error in the above-entitled cause
may have to and including the 2d day of August,
1918, within which to file the record on writ of error
and docket the cause in the United States Circuit
Court of Appeals for the Ninth Judicial Circuit.

Dated July 2, 1918.

WM. H. HUNT,
Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 10 Enlarging Time to Aug. 2/1918 to File Record Thereof and to Docket Case. Filed Jul. 2, 1918. F. D. Monckton, Clerk.

[Endorsed]: No. 3192. United States Circuit Court of Appeals for the Ninth Circuit. 6 Orders Under Rule 10 Enlarging Time to Aug. 2, 1918, to File Record Thereof and to Docket Case. Refiled Jul. 31, 1918. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals, in
and for the Ninth Circuit.*

No. 3191.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA et al., etc.,

Plaintiffs in Error,

vs.

EDMUND J. BURKHARDT,

Defendant in Error.

No. 3192.

UNITED PROPERTIES COMPANY OF CALI-
FORNIA et al., etc.,

Plaintiffs in Error,

vs.

MARY ELLEN KIBBE,

Defendant in Error.

No. 3193.

UNITED PROPERTIES COMPANY OF CALIFORNIA et al., etc.,

Plaintiffs in Error,

vs.

EDMUND J. BURKHARDT,

Defendant in Error.

Stipulation and Order That Cases Nos. 3191 and 3193 shall Abide Decision of Case No. 3192 and That Transcripts of Record in Cases Nos. 3191 and 3193 Need not be Printed.

It is hereby stipulated by and between the parties hereto as follows:

1. That the decision upon the Writs of Error taken out in the two cases above entitled, Nos. 3191 and 3193, shall abide by and be governed by the decision rendered by the above-entitled court in cause No. 3192.

2. That the record in causes Nos. 3191 and 3193, above entitled, need not be printed but that the writs of error in the above-entitled causes may be submitted to the Court upon the record in cause No. 3192 and upon the arguments made therein.

3. That the entire record in cause No. 3192 shall be printed by the clerk of the above-entitled court.

The above stipulation shall be effective only in the event that it shall be approved by the above-entitled court.

Dated August 28th, 1918.

R. P. HENSHALL,
Attorney for Plaintiffs in Error.
KEYES and ERSKINE,
Attorneys for Defendant in Error.

On reading the above stipulation and good cause appearing therefor,—IT IS ORDERED that the record be made up and printed as therein provided.

Done and dated this 29th day of August, 1918.

WM. W. MORROW,
WM. H. HUNT,

Judges of U. S. Circuit Court of Appeals, Ninth
Circuit.

[Endorsed]: Nos. 3191, 3192, 3193. Original. U. S. Circuit Court of Appeals, Ninth Circuit, State of California. United Properties Company of California et al., etc., Plaintiffs in Error, vs. Edmund J. Burkhardt, Defendant in Error, etc. etc. Stipulation and Order That Cases Nos. 3191 and 3193 shall Abide Decision, etc., in Case No. 3192, etc. Filed Aug. 29, 1918. F. D. Monckton, Clerk.

